

**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 June 27, 2004

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 1-7882

---

**ADVANCED MICRO DEVICES, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation or organization)

**94-1692300**  
(I.R.S. Employer  
Identification No.)

**One AMD Place**  
**Sunnyvale, California**  
(Address of principal executive offices)

**94088**  
(Zip Code)

**Registrant's telephone number, including area code: (408) 749-4000**

---

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

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

Indicate the number of shares outstanding of the registrant's common stock, \$0.01 par value as of August 2, 2004: 354,927,359

---

---

[Table of Contents](#)

[INDEX](#)

|   | <u>Page No.</u> |
|---|-----------------|
| Part I.   |                 |
| <a href="#">Financial Information</a>   |                 |
| Item 1.   |                 |
| <a href="#">Financial Statements (unaudited)</a>  |                 |
| <a href="#">Condensed Consolidated Statements of Operations – Quarters and Six Months Ended June 27, 2004 and June 29, 2003</a> | 3               |
| <a href="#">Condensed Consolidated Balance Sheets – June 27, 2004 and December 28, 2003</a>                                     | 4               |
| <a href="#">Condensed Consolidated Statements of Cash Flows – Six Months Ended June 27, 2004 and June 29, 2003</a>              | 5               |
| <a href="#">Notes to Condensed Consolidated Financial Statements</a>  | 6               |
| Item 2.   |                 |
| <a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>                           | 24              |
| Item 3.   |                 |
| <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>  | 75              |
| Item 4.   |                 |
| <a href="#">Controls and Procedures</a>   | 75              |
| Part II.  |                 |
| <a href="#">Other Information</a>   |                 |
| Item 4.   |                 |
| <a href="#">Submission of Matters to a Vote of Security Holders</a>   | 76              |
| Item 6.   |                 |
| <a href="#">Exhibits and Reports on Form 8-K</a>  | 76              |
| <a href="#">Signatures</a>  | 79              |

[Table of Contents](#)

PART I. FINANCIAL INFORMATION  
ITEM 1. FINANCIAL STATEMENTS

ADVANCED MICRO DEVICES, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(Unaudited)

(Thousands except per share amounts)

|  | Quarter Ended    |                     | Six Months Ended |                     |
|--|------------------|---------------------|------------------|---------------------|
|  | June 27,<br>2004 | June 29,<br>2003    | June 27,<br>2004 | June 29,<br>2003    |
| Net sales  | \$ 956,288       | \$ 645,261          | \$ 1,888,139     | \$ 1,359,816        |
| Net sales to related party (see Note 3)  | 305,549          | —                   | 610,131          | —                   |
| <b>Total net sales</b>   | <b>1,261,837</b> | <b>645,261</b>      | <b>2,498,270</b> | <b>1,359,816</b>    |
| Expenses:  |                  |                     |                  |                     |
| Cost of sales  | 783,069          | 425,085             | 1,551,909        | 921,677             |
| Research and development   | 224,821          | 208,513             | 450,911          | 411,575             |
| Marketing, general and administrative  | 178,993          | 135,161             | 359,210          | 273,389             |
| Restructuring and other special charges, net   | 2,514            | —                   | 2,514            | 2,146               |
|  | <b>1,189,397</b> | <b>768,759</b>      | <b>2,364,544</b> | <b>1,608,787</b>    |
| <b>Operating income (loss)</b>   | <b>72,440</b>    | <b>(123,498)</b>    | <b>133,726</b>   | <b>(248,971)</b>    |
| Interest income and other, net   | (2,203)          | 4,971               | 8,778            | 11,711              |
| Interest expense   | (27,956)         | (26,364)            | (58,110)         | (52,169)            |
| <b>Income (loss) before minority interest, income taxes, and equity in net income of Manufacturing Joint Venture</b> | <b>42,281</b>    | <b>(144,891)</b>    | <b>84,394</b>    | <b>(289,429)</b>    |
| Minority interest in income of subsidiary  | (6,527)          | —                   | (1,176)          | —                   |
| <b>Income (loss) before income taxes and equity in net income of Manufacturing Joint Venture</b>                     | <b>35,754</b>    | <b>(144,891)</b>    | <b>83,218</b>    | <b>(289,429)</b>    |
| Provision for income taxes   | 3,574            | —                   | 5,947            | 2,936               |
| <b>Income (loss) before equity in net income of Manufacturing Joint Venture</b>                                      | <b>32,180</b>    | <b>(144,891)</b>    | <b>77,271</b>    | <b>(292,365)</b>    |
| Equity in net income of Manufacturing Joint Venture  | —                | 4,795               | —                | 5,913               |
| <b>Net income (loss)</b>   | <b>\$ 32,180</b> | <b>\$ (140,096)</b> | <b>\$ 77,271</b> | <b>\$ (286,452)</b> |
| Net income (loss) per common share (see Note 5):   |                  |                     |                  |                     |
| Basic  | \$ 0.09          | \$ (0.40)           | \$ 0.22          | \$ (0.83)           |
| Diluted  | \$ 0.09          | \$ (0.40)           | \$ 0.21          | \$ (0.83)           |
| Shares used in per share calculation:  |                  |                     |                  |                     |
| Basic  | 353,655          | 346,320             | 352,491          | 345,666             |
| Diluted  | 420,053          | 346,320             | 419,008          | 345,666             |

See accompanying notes.

[Table of Contents](#)

ADVANCED MICRO DEVICES, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS

(Thousands except share amounts)

|  | June 27,<br>2004 | December 28,<br>2003* |
|--|------------------|-----------------------|
|  | (Unaudited)      |                       |
| <b>ASSETS</b>  |                  |                       |
| Current assets:  |                  |                       |
| Cash and cash equivalents  | \$ 698,250       | \$ 968,183            |
| Compensating balance   | 212,625          | 217,621               |
| Short-term investments   | 231,399          | 127,563               |
|  | <hr/>            | <hr/>                 |
| Total cash and cash equivalents, compensating balance and short-term investments   | 1,142,274        | 1,313,367             |
| Accounts receivable  | 529,936          | 442,217               |
| Accounts receivable from related party (see Note 3 and Note 11)  | 236,261          | 187,898               |
| Allowance for doubtful accounts  | (21,649)         | (20,658)              |
|  | <hr/>            | <hr/>                 |
| Total accounts receivable, net   | 744,548          | 609,457               |
| Inventories:   |                  |                       |
| Raw materials  | 46,721           | 42,925                |
| Work-in-process  | 524,247          | 504,861               |
| Finished goods   | 155,211          | 149,872               |
|  | <hr/>            | <hr/>                 |
| Total inventories  | 726,179          | 697,658               |
| Deferred income taxes  | 115,537          | 102,651               |
| Prepaid expenses and other current assets  | 148,909          | 177,145               |
|  | <hr/>            | <hr/>                 |
| Total current assets   | 2,877,447        | 2,900,278             |
| Property, plant and equipment:   |                  |                       |
| Land   | 60,722           | 61,002                |
| Buildings and leasehold improvements   | 2,201,026        | 2,277,947             |
| Equipment  | 7,660,652        | 7,581,241             |
| Construction in progress   | 450,302          | 152,204               |
|  | <hr/>            | <hr/>                 |
| Total property, plant and equipment  | 10,372,702       | 10,072,394            |
| Accumulated depreciation and amortization  | (6,580,208)      | (6,223,902)           |
|  | <hr/>            | <hr/>                 |
| Property, plant and equipment, net   | 3,792,494        | 3,848,492             |
| Other assets   | 339,521          | 345,575               |
| Total assets   | \$ 7,009,462     | \$ 7,094,345          |
|  | <hr/>            | <hr/>                 |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>  |                  |                       |
| Current liabilities:   |                  |                       |
| Accounts payable   | \$ 505,191       | \$ 460,271            |
| Accounts payable to related party (see Note 3)   | 35,213           | 32,345                |
| Accrued compensation and benefits  | 165,788          | 160,644               |
| Accrued liabilities  | 289,580          | 327,122               |
| Restructuring accruals, current portion  | 20,160           | 29,770                |
| Income taxes payable   | 14,560           | 41,370                |
| Deferred income on shipments to distributors   | 131,538          | 116,949               |
| Current portion of long-term debt and capital lease obligations  | 246,642          | 193,266               |
| Other current liabilities  | 102,638          | 90,533                |
|  | <hr/>            | <hr/>                 |
| Total current liabilities  | 1,511,310        | 1,452,270             |
| Deferred income taxes  | 162,752          | 157,690               |
| Long-term debt and capital lease obligations, less current portion   | 1,708,049        | 1,859,674             |
| Long-term debt payable to related party (see Note 3)   | 40,000           | 40,000                |
| Other long-term liabilities  | 349,289          | 428,761               |
| Minority interest  | 718,216          | 717,640               |
| Commitments and contingencies  |                  |                       |
| Stockholders' equity:  |                  |                       |
| Capital stock:   |                  |                       |
| Common stock, par value \$0.01; 750,000,000 shares authorized; shares issued: 361,185,519 on June 27, 2004 and 357,119,809 on December 28, 2003; shares outstanding: 354,347,771 on June 27, 2004 and 350,252,591 on December 28, 2003 | 3,543            | 3,502                 |
| Capital in excess of par value   | 2,096,425        | 2,051,254             |
| Treasury stock, at cost (6,837,748 shares on June 27, 2004 and 6,867,218 shares on December 28, 2003)  | (92,063)         | (92,421)              |
| Retained earnings  | 294,888          | 217,891               |
| Accumulated other comprehensive income   | 217,053          | 258,084               |
| Total stockholders' equity   | 2,519,846        | 2,438,310             |
|  | <hr/>            | <hr/>                 |
| Total liabilities and stockholders' equity   | \$ 7,009,462     | \$ 7,094,345          |
|  | <hr/>            | <hr/>                 |

---

\* Amounts as of December 28, 2003 were derived from the December 28, 2003 audited financial statements

See accompanying notes.

[Table of Contents](#)

ADVANCED MICRO DEVICES, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(Unaudited)  
(Thousands)

|  | Six Months Ended |                  |
|--|------------------|------------------|
|  | June 27,<br>2004 | June 29,<br>2003 |
| Cash flows from operating activities:  |                  |                  |
| Net income (loss)  | \$ 77,271        | \$ (286,452)     |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: |                  |                  |
| Minority interest in income of subsidiary  | 1,175            | —                |
| Depreciation   | 568,123          | 400,521          |
| Amortization   | 22,250           | 22,801           |
| Impairment of equity investment  | —                | 258              |
| Recovery of (provision for) doubtful accounts  | 991              | (5,198)          |
| Change in deferred income taxes  | (5,322)          | —                |
| Restructuring and other special charges, net   | 2,514            | 3,705            |
| Foreign grant and subsidy income   | (40,033)         | (32,102)         |
| Net loss on disposal of property, plant and equipment  | 1,914            | 4,146            |
| Net gain realized on sale of available-for-sale securities   | (7,188)          | (3,736)          |
| Compensation recognized under employee stock plans   | 607              | 995              |
| Undistributed income of joint venture  | —                | (5,913)          |
| Recognition of deferred gain on sale of building   | (841)            | (840)            |
| Tax expense allocated to minority interest   | 1,356            | —                |
| Changes in operating assets and liabilities:   |                  |                  |
| (Increase) decrease in accounts receivable   | (85,716)         | 55,138           |
| Increase in accounts receivable from related party   | (48,363)         | —                |
| Increase in inventories  | (31,368)         | (34,781)         |
| Decrease (increase) in prepaid expenses  | 31,320           | (10,765)         |
| Decrease in other assets   | 11,909           | 34,466           |
| (Decrease) increase in income taxes payable  | (26,810)         | 17,487           |
| Refund of customer deposits under LT purchase agreements   | (20,500)         | (26,500)         |
| Net decrease in accounts payable and accrued liabilities   | (532)            | (215,538)        |
| Increase in accounts payable to related party  | 2,868            | —                |
| Increase (decrease) in accrued compensation and benefits   | 5,313            | (8,963)          |
| Net cash provided by (used in) operating activities  | 460,938          | (91,271)         |
| Cash flows from investing activities:  |                  |                  |
| Purchases of property, plant and equipment   | (563,010)        | (283,576)        |
| Proceeds from sale of property, plant and equipment  | 7,217            | 2,458            |
| Business acquisitions, net of cash acquired  | —                | (6,265)          |
| Purchases of available-for-sale securities   | (172,586)        | (867,115)        |
| Proceeds from sale and maturity of available-for-sale securities                                   | 68,575           | 1,440,862        |
| Net cash (used in) provided by investing activities  | (659,804)        | 286,364          |
| Cash flows from financing activities:  |                  |                  |
| Proceeds from borrowings   | 22,457           | 13,678           |
| Payments on debt, capital lease obligations and other  | (160,868)        | (48,792)         |
| Proceeds from foreign grants and subsidies   | 20               | 81,596           |
| Proceeds from sale leaseback transactions  | 27,614           | —                |
| Decrease in compensating balance   | —                | 26,073           |
| Proceeds from issuance of stock  | 44,681           | 10,285           |
| Net cash (used in) provided by financing activities  | (66,096)         | 82,840           |
| Effect of exchange rate changes on cash and cash equivalents                                       | (4,971)          | 2,567            |
| Net (decrease) increase in cash and cash equivalents   | (269,933)        | 280,500          |
| Cash and cash equivalents at beginning of period   | 968,183          | 289,839          |
| Cash and cash equivalents at end of period   | \$ 698,250       | \$ 570,339       |
| Non-cash financing activities  |                  |                  |
| Equipment sale leaseback transaction   | \$ 27,451        | \$ —             |

See accompanying notes.

---

[Table of Contents](#)

ADVANCED MICRO DEVICES, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)  
June 27, 2004

1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of Advanced Micro Devices, Inc. (the Company or AMD) have been prepared in accordance with generally accepted accounting principles for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. The results of operations for the interim periods shown in this report are not necessarily indicative of results to be expected for the full fiscal year ending December 26, 2004. In the opinion of the Company's management, the information contained herein reflects all adjustments necessary to make the results of operations for the interim periods a fair statement of such operations. All such adjustments are of a normal recurring nature. The interim consolidated financial statements should be read in conjunction with the consolidated financial statements in the Company's Annual Report on Form 10-K for the fiscal year ended December 28, 2003.

The consolidated financial statements of the Company for periods subsequent to June 29, 2003 include FASL LLC, which was formed by the Company and Fujitsu Limited, effective June 30, 2003. On June 28, 2004, FASL LLC's legal name was changed to Spansion LLC. The Company also changed the legal names of Spansion LLC's subsidiaries by replacing "FASL" with "Spansion" in each instance. Spansion LLC is headquartered in Sunnyvale, California, and its manufacturing, research and assembly operations are in the United States and Asia. As the Company has a 60 percent controlling equity interest in Spansion LLC, it began consolidating the results of Spansion LLC's operations on June 30, 2003, the effective date of its formation. Certain prior period amounts have been reclassified to conform to the current period presentation.

The Company uses a 52- to 53-week fiscal year ending on the last Sunday in December. The quarters and six months ended June 27, 2004 and June 29, 2003 each included 13 weeks and 26 weeks.

2. Stock-Based Incentive Compensation Plans

The Company has elected to use the intrinsic value method under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (APB 25), as permitted by Statement of Financial Accounting Standard No. 123, "Accounting for Stock-Based Compensation" (SFAS 123), subsequently amended by SFAS 148, "Accounting for Stock-Based Compensation— Transition and Disclosure" to account for stock options issued to its employees under its 2004 Equity Incentive Plan and its prior stock option plans, and amortizes deferred compensation, if any, ratably over the vesting period of the options. Compensation expense resulting from the issuance of fixed term stock option awards is measured as the difference between the exercise price of the option and the fair market value of the underlying share of company stock subject to the option on the award's grant date. The Company also makes pro forma fair value disclosures required by SFAS 123 which reflect

## [Table of Contents](#)

the impact on net income (loss) and net income (loss) per share had the Company applied the fair value method of accounting for its stock-based awards to employees. The Company estimates the fair value of its stock-based awards to employees using a Black-Scholes option pricing model. The pro forma effects on net income (loss) and net income (loss) per share are as follows for the quarters and the six months ended June 27, 2004 and June 29, 2003.

|  | Quarter Ended                        |                  | Six Months Ended |                  |
|--|--------------------------------------|------------------|------------------|------------------|
|  | June 27,<br>2004                     | June 29,<br>2003 | June 27,<br>2004 | June 29,<br>2003 |
|  | (Thousands except per share amounts) |                  |                  |                  |
| Net income (loss)—as reported                          | \$ 32,180                            | \$ (140,096)     | \$ 77,271        | \$ (286,452)     |
| Plus: compensation expense recorded under APB 25       | 265                                  | 507              | 596              | 995              |
| Less: SFAS 123 compensation expenses                   | (29,672)                             | (15,482)         | (64,648)         | (37,680)         |
| Net income (loss)—pro forma                            | \$ 2,773                             | \$ (155,071)     | \$ 13,219        | \$ (323,137)     |
| Basic net income (loss) per common share—as reported   | \$ 0.09                              | \$ (0.40)        | \$ 0.22          | \$ (0.83)        |
| Diluted net income (loss) per common share—as reported | \$ 0.09                              | \$ (0.40)        | \$ 0.21          | \$ (0.83)        |
| Basic net income (loss) per common share—pro forma     | \$ 0.01                              | \$ (0.45)        | \$ 0.04          | \$ (0.93)        |
| Diluted net income (loss) per common share—pro forma   | \$ 0.01                              | \$ (0.45)        | \$ 0.04          | \$ (0.93)        |

### 3. Related-Party Transactions

Fujitsu became a related party of the Company effective June 30, 2003 as a result of its investment in Spansion LLC. The following tables present the significant transactions between the Company, both through its consolidated subsidiary Spansion LLC and directly, and Fujitsu and balances receivable from or payable to Fujitsu as of and for the periods presented:

|                                   | Quarter Ended    | Six Months Ended     |
|-----------------------------------|------------------|----------------------|
|                                   | June 27,<br>2004 | June 27,<br>2004     |
|                                   | (Thousands)      |                      |
| Sales to Fujitsu                  | \$ 305,549       | \$ 610,131           |
| Royalty expenses to Fujitsu       | 5,855            | 9,925                |
| Distributor commission to Fujitsu | 19,529           | 37,812               |
| Service fees to Fujitsu           | 8,127            | 16,796               |
|                                   | June 27,<br>2004 | December 28,<br>2003 |
|                                   | (Thousands)      |                      |
| Accounts receivable from Fujitsu  | \$ 236,261       | \$ 187,898           |
| Accounts payable to Fujitsu       | 35,213           | 32,345               |
| Notes payable to Fujitsu          | 40,000           | 40,000               |



## [Table of Contents](#)

The royalty payable to Fujitsu represent the payments made by Spansion LLC to Fujitsu for its rights to Fujitsu's intellectual property. The commission expense to Fujitsu represents the compensation that Spansion LLC pays to Fujitsu for being a distributor of Spansion™ Flash memory products. The service fees to Fujitsu represent charges paid by Spansion LLC in exchange for services provided by Fujitsu, including information technology support, research and development, quality assurance, insurance, facilities, environmental and human resources services. These services are provided primarily to Spansion Japan Limited, Spansion LLC's wholly-owned subsidiary (Spansion Japan).

In addition to the above transactions with Fujitsu, certain of Spansion Japan's employees are also covered by a defined pension plan and a lump-sum retirement benefit plan administered by Fujitsu. The amount of pension cost and the unfunded pension liability related to these employees are not material to the Company's consolidated financial statements. For the six-month period ended June 27, 2004, the Company recorded pension cost of approximately \$5 million and as of June 27, 2004, the Company has recorded a pension benefit obligation liability of approximately \$26 million. As of March 31, 2004, the date of the latest actuarial analysis of pension liability, the estimated projected benefit obligations under the plan related to Spansion Japan employees were approximately \$41 million and the estimated total pension plan assets were approximately \$14 million.

The Company's transactions with Fujitsu are based on negotiated terms which the Company believes are arms-length.

Prior to the formation of Spansion LLC, the Company and Fujitsu operated a manufacturing joint venture, Fujitsu AMD Semiconductor Limited (the Manufacturing Joint Venture). Each party contributed its interest in the Manufacturing Joint Venture to Spansion LLC. The following tables present the significant related-party transactions and account balances between the Company and the Manufacturing Joint Venture for the six months ended June 29, 2003. The Company accounted for its investment in the Manufacturing Joint Venture under the equity method.

|   | Six Months<br>Ended<br>June 29,<br>2003 |
|---|---|
|   | (Thousands)                             |
| Royalty income from Manufacturing Joint Venture | \$ 24,611                               |
| Purchases from Manufacturing Joint Venture      | 356,595                                 |
| Sales to Manufacturing Joint Venture            | 222,570                                 |

The following is condensed unaudited financial data for the Manufacturing Joint Venture for the six months ended June 29, 2003 (in thousands):

|                     |           |
|---------------------|-----------|
| Net sales           | \$565,037 |
| Gross profit (loss) | (12,955)  |
| Operating loss      | (14,958)  |
| Net loss            | (9,618)   |

## [Table of Contents](#)

The Company's share of the Manufacturing Joint Venture's net income (loss) differed from the equity in net income previously reported on the condensed consolidated statements of operations. The difference was due to adjustments resulting from intercompany profit eliminations and differences in U.S. and Japanese tax treatment of the Manufacturing Joint Venture's income, which were reflected on the Company's consolidated statements of operations. The Company never received cash dividends from the Manufacturing Joint Venture.

### 4. Financial Instruments

The following is a summary of the available-for-sale securities held by the Company as of June 27, 2004:

|   | <u>Amortized<br/>Cost</u> | <u>Fair<br/>Market<br/>Value</u> |
|---|---------------------------|----------------------------------|
| <b>Cash equivalents:</b>                                      |                           |                                  |
| Time deposits   | \$ 300,142                | \$ 300,142                       |
| Federal agency notes  | 22,841                    | 22,841                           |
| Money market funds  | 190,000                   | 190,000                          |
| Commercial papers   | 178,927                   | 178,927                          |
| <b>Total cash equivalents</b>                                 | <b>\$ 691,910</b>         | <b>\$ 691,910</b>                |
| <b>Short-term investments:</b>                                |                           |                                  |
| Bank notes  | \$ 2,727                  | \$ 2,992                         |
| Auction rate preferred stocks                                 | 225,250                   | 225,250                          |
| Corporate notes   | 2,879                     | 3,157                            |
| <b>Total short-term investments</b>                           | <b>\$ 230,856</b>         | <b>\$ 231,399</b>                |
| <b>Long-term investments:</b>                                 |                           |                                  |
| Equity investments  | \$ 4,842                  | \$ 8,341                         |
| <b>Total long-term investments (included in other assets)</b> | <b>\$ 4,842</b>           | <b>\$ 8,341</b>                  |
| <b>Grand Total</b>  | <b>\$ 927,608</b>         | <b>\$ 931,650</b>                |

Long-term equity investments consist of marketable equity securities that, while available for sale, are not intended to be used to fund current operations.

The amortized cost and estimated fair value of short-term investments at June 27, 2004, by contractual maturity, are shown below. Actual maturities may differ from contractual maturities because issuers may have the right to call or prepay obligations without penalties. The Company does not have any short-term investments with maturities greater than one year from June 27, 2004.

[Table of Contents](#)

|                         | Amortized<br>Cost | Estimated<br>Fair Value |
|-------------------------|-------------------|-------------------------|
|                         | (Thousands)       |                         |
| Due in one year or less | \$ 230,856        | \$ 231,399              |
| <b>Total</b>            | <b>\$ 230,856</b> | <b>\$ 231,399</b>       |

The Company realized net gains from the sale of available-for-sale securities of approximately \$7 million and \$3.7 million in the first six months of 2004 and 2003, which were included in interest income and other, net.

At June 27, 2004 and December 28, 2003, the Company had approximately \$14 million and \$12 million of investments classified as held to maturity, consisting of commercial paper and treasury notes used for long-term workers' compensation and leasehold deposits, that were included in other assets. The fair market value of these investments approximated their cost at June 27, 2004 and December 28, 2003.

The compensating balance of \$213 million at June 27, 2004 represents the minimum cash balance that AMD Saxony Limited Liability Company & Co. KG, an indirect wholly owned subsidiary of the Company, must maintain pursuant to the terms of the Dresden Loan Agreements (as defined in Note 8).

Included in other current assets is \$5 million of restricted cash associated with the advance receipt of interest subsidies from the Federal Republic of Germany and the State of Saxony. Restrictions over the Company's access to the restricted cash will lapse as the Company incurs qualifying interest expense on the Dresden term loans over the next quarter.

5. Net Income (Loss) Per Common Share

Basic net income (loss) per common share is computed using the weighted-average common shares outstanding. Diluted net income (loss) per common share is computed using the weighted-average common shares outstanding plus any potential dilutive securities. Potential dilutive securities include stock options and shares issuable upon the conversion of convertible debt. The following table sets forth the components of basic and diluted income (loss) per common share:

|   | Quarter Ended                      |                  | Six Months Ended |                  |
|---|------------------------------------|------------------|------------------|------------------|
|   | June 27,<br>2004                   | June 29,<br>2003 | June 27,<br>2004 | June 29,<br>2003 |
|   | (Thousands, except per share data) |                  |                  |                  |
| <b>Numerator:</b>   |                                    |                  |                  |                  |
| Numerator for basic income (loss) per common share  | \$ 32,180                          | \$ (140,096)     | \$ 77,271        | \$ (286,452)     |
| Effect of assumed conversion of \$402.5 million 4.5% senior convertible notes:              |                                    |                  |                  |                  |
| Interest expense, net of tax provision  | 4,912                              | —                | 10,027           | —                |
| Profit sharing expense adjustment, net of tax provision                                     | (492)                              | —                | (1,002)          | —                |
| Numerator for diluted income (loss) per common share  | \$ 36,600                          | \$ (140,096)     | \$ 86,296        | \$ (286,452)     |
| <b>Denominator:</b>   |                                    |                  |                  |                  |
| Denominator for basic income (loss) per share - weighted - average shares                   | 353,655                            | 346,320          | 352,491          | 345,666          |
| Effect of dilutive securities:  |                                    |                  |                  |                  |
| Employee stock options  | 11,785                             | —                | 11,904           | —                |
| Convertible notes   | 54,613                             | —                | 54,613           | —                |
| Potential dilutive common shares  | 66,398                             | —                | 66,517           | —                |
| Denominator for diluted income (loss) per common share - adjusted weighted - average shares | 420,053                            | 346,320          | 419,008          | 345,666          |
| <b>Net income (loss) per common share:</b>  |                                    |                  |                  |                  |
| Basic   | \$ 0.09                            | \$ (0.40)        | \$ 0.22          | \$ (0.83)        |
| Diluted   | \$ 0.09                            | \$ (0.40)        | \$ 0.21          | \$ (0.83)        |

---

## [Table of Contents](#)

Potential dilutive common shares of approximately 21 million and 77 million for the three months ended June 27, 2004 and June 29, 2003 and 21 million and 76 million for the six months ended June 27, 2004 and June 29, 2003 were not included in the net income (loss) per common share calculation, as their inclusion would have been antidilutive.

### 6. Segment Reporting

Management reviews and assesses operating performance using segment net sales and operating income before interest, taxes and minority interest. These performance measures include the allocation of expenses to the operating segments based on management judgment. Prior to the third quarter of 2003, the Company had two reportable segments, the Core Products and Foundry Services segments. Primarily as a result of the formation of Spansion LLC, the Company re-evaluated its reportable segments under SFAS 131.

Beginning in the third quarter of 2003, the Company changed its reportable segments to: the Computation Products segment, which includes microprocessor products for desktop and mobile PCs, servers and workstations and chipset products, and the Memory Products segment, which includes Spansion Flash memory products.

The All Other category is not a reportable segment, but rather it includes other small operating segments (Personal Connectivity Solutions products, which include low power MIPS and x86 solutions, and Foundry Services, which included fees from our former voice communications and programmable logic products subsidiaries) that represent less than ten percent of the Company's consolidated net sales and assets individually and in the aggregate. This category also includes certain operating expenses and credits that are not allocated to the operating segments. Prior period segment information has been reclassified to conform to the current period presentation. However, because Spansion LLC did not exist prior to June 30, 2003, the Company's results of operations for prior periods do not include the consolidation of Spansion LLC's operations. Accordingly, the segment operating information for the

[Table of Contents](#)

Memory Products segment for the quarter and six months ended June 27, 2004 is not fully comparable to the reclassified segment information for the prior periods presented.

The following table is a summary of net sales and operating income (loss) by segment with reconciliations to net income (loss) for the quarters and six months ended June 27, 2004 and June 29, 2003:

|   | Quarter Ended    |                  | Six Months Ended |                  |
|---|------------------|------------------|------------------|------------------|
|   | June 27,<br>2004 | June 29,<br>2003 | June 27,<br>2004 | June 29,<br>2003 |
|   | (Thousands)      |                  | (Thousands)      |                  |
| Computation Products                                |                  |                  |                  |                  |
| Net sales   | \$ 554,148       | \$ 406,205       | \$ 1,125,249     | \$ 875,729       |
| Operating income (loss)                             | 57,504           | (51,727)         | 124,787          | (105,171)        |
| Memory Products                                     |                  |                  |                  |                  |
| Net sales   | 673,259          | 210,592          | 1,300,977        | 428,864          |
| Operating income (loss)                             | 45,163           | (73,700)         | 58,975           | (137,371)        |
| All Other   |                  |                  |                  |                  |
| Net sales   | 34,430           | 28,464           | 72,044           | 55,223           |
| Operating income (loss)                             | (30,227)         | 1,929            | (50,036)         | (6,429)          |
| Total   |                  |                  |                  |                  |
| Net sales   | 1,261,837        | 645,261          | 2,498,270        | 1,359,816        |
| Operating income (loss)                             | 72,440           | (123,498)        | 133,726          | (248,971)        |
| Interest income and other, net                      | (2,203)          | 4,971            | 8,778            | 11,711           |
| Interest expense                                    | (27,956)         | (26,364)         | (58,110)         | (52,169)         |
| Minority interest in income of subsidiary           | (6,527)          | —                | (1,176)          | —                |
| Provision for income taxes                          | (3,574)          | —                | (5,947)          | (2,936)          |
| Equity in net income of Manufacturing Joint Venture | —                | 4,795            | —                | 5,913            |
| Net income (loss)                                   | \$ 32,180        | \$ (140,096)     | \$ 77,271        | \$ (286,452)     |

7. Comprehensive Income (Loss)

The following are the components of comprehensive income (loss):

|  | Quarter Ended    |                  | Six Months Ended |                  |
|--|------------------|------------------|------------------|------------------|
|  | June 27,<br>2004 | June 29,<br>2003 | June 27,<br>2004 | June 29,<br>2003 |
|  | (Thousands)      |                  | (Thousands)      |                  |
| Net income (loss)  | \$ 32,180        | \$ (140,096)     | \$ 77,271        | \$ (286,452)     |
| Net change in cumulative translation adjustments                         | (3,881)          | 62,420           | (23,828)         | 102,993          |
| Net change in unrealized gains/(losses) on cash flow hedges              | 15,891           | (8,144)          | (13,524)         | (11,628)         |
| Net change in unrealized gains/(losses) on available-for-sale securities | (207)            | 1,518            | (3,679)          | (181)            |
| Other comprehensive (loss) income  | 11,803           | 55,794           | (41,031)         | 91,184           |
| Comprehensive income (loss)  | \$ 43,983        | \$ (84,302)      | \$ 36,240        | \$ (195,268)     |

[Table of Contents](#)

8. Guarantees

The Company accounts for guarantees in accordance with FIN 45, “Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others.” For guarantees issued before December 31, 2002 (the effective date of FIN 45), intercompany guarantees, or where the underlying liabilities of the guarantee are already recorded on the Company’s unaudited condensed consolidated balance sheet, the Company did not record any incremental liability associated with these guarantees.

*Guarantees of Indebtedness Recorded on the Company’s Unaudited Condensed Consolidated Balance Sheet*

The following table summarizes the principal guarantees issued as of June 27, 2004 related to underlying liabilities that are already recorded on the Company’s unaudited condensed consolidated balance sheet as of June 27, 2004 and their expected expiration dates by year. No incremental liabilities are recorded on the Company’s unaudited consolidated balance sheet for these guarantees.

|  | Amounts<br>Guaranteed * | Amounts of guarantee expiration per period |                   |                   |                  |             | 2009 and<br>Beyond |
|--|-------------------------|--|-------------------|-------------------|------------------|-------------|--------------------|
|  |                         | 2004                                       | 2005              | 2006              | 2007             | 2008        |                    |
|  |                         | (Thousands)                                |                   |                   |                  |             |                    |
| Dresden intercompany guarantee         | \$ 306,180              | \$ —                                       | \$ 164,025        | \$ 142,155        | \$ —             | \$ —        | \$ —               |
| July 2003 Spansion term loan guarantee | 35,009                  | 8,250                                      | 16,500            | 10,259            | —                | —           | —                  |
| Spansion Japan term loan guarantee     | 86,899                  | 13,369                                     | 26,738            | 26,738            | 20,054           | —           | —                  |
| Spansion capital lease guarantees      | 116,037                 | 24,679                                     | 51,010            | 37,077            | 3,271            | —           | —                  |
| <b>Total guarantees</b>                | <b>\$ 544,125</b>       | <b>\$ 46,298</b>                           | <b>\$ 258,273</b> | <b>\$ 216,229</b> | <b>\$ 23,325</b> | <b>\$ —</b> | <b>\$ —</b>        |

\* Amounts represent the principal amount of the underlying obligations guaranteed and are exclusive of obligations for interest, fees and expenses.

*Dresden Term Loan Agreements and Dresden Intercompany Guarantee*

AMD Saxony Limited Liability Company & Co. KG, (AMD Saxony, formerly known as AMD Saxony Manufacturing GmbH), an indirect wholly owned German subsidiary of AMD, continues to facilitate Fab 30, which began production in the third quarter of 2000. AMD, the Federal Republic of Germany, the State of Saxony, and a consortium of banks are providing financing for the project.

---

## Table of Contents

In March 1997, AMD Saxony entered into a loan agreement and other related agreements (the Dresden Loan Agreements) with a consortium of banks led by Dresdner Bank AG, a German financial institution, in order to finance the project. AMD Saxony has pledged substantially all of its property as security under the Dresden Loan Agreements. The Dresden Loan Agreements were amended in February 2004 to accommodate the construction, facilitization, and operation of Fab 36, our 300-millimeter wafer fabrication facility (Fab 36) in Dresden, Germany (see Note 12).

Because most of the amounts under the Dresden Loan Agreements are denominated in deutsche marks (converted to euros), the dollar amounts are subject to change based on applicable exchange rates. The Company used the exchange rate that was permanently fixed on January 1, 1999, of 1.95583 deutsche marks to one euro for the conversion of deutsche marks to euros, and then used exchange rate at June 27, 2004, of 0.823 euro to one U.S. dollar to translate the amounts denominated in euros into U.S. dollars. However, with respect to amounts for investment grants and allowances and interest subsidies received by AMD Saxony through June 27, 2004, the Company used historical exchange rates that were in effect at the time AMD Saxony received these grants, allowances and subsidies to convert amounts denominated in deutsche marks (converted to euros) into U.S. dollars.

The Dresden Loan Agreements, as amended, provide for the funding of the construction and facilitization of Fab 30 and also require that the Company guarantee up to 50 percent of AMD Saxony's obligations under the Dresden Loan Agreements, which guarantee must not be less than \$135 million or more than \$365 million, until the bank loans are repaid in full. As of June 27, 2004, the amount guaranteed was \$306 million.

### *July 2003 Spansion Term Loan Guarantee*

On July 11, 2003, the Company amended its September 2002 Loan Agreement and assigned it to Spansion LLC. Under the Amended and Restated Term Loan Agreement (the July 2003 Spansion Term Loan), amounts borrowed bear interest at a variable rate of LIBOR plus four percent, which was 5.11 percent at June 27, 2004. Repayment occurs in equal, consecutive, quarterly principal and interest installments ending in September 2006. As of June 27, 2004, \$58 million was outstanding under the July 2003 Spansion Term Loan, of which 60 percent is guaranteed by the Company and 40 percent is guaranteed by Fujitsu. Spansion LLC has granted a security interest in certain property, plant and equipment as security under the July 2003 Spansion Term Loan. In addition, as security for our guarantee obligations, we granted a security interest in certain of our assets, including our accounts receivable, inventory, general intangibles (excluding intellectual property) and the related proceeds.

### *Spansion Japan Term Loan Guarantee*

As a result of the formation of Spansion LLC, the Manufacturing Joint Venture's third-party loans were refinanced from the proceeds of a term loan entered into between Spansion Japan and a Japanese financial institution. Under the agreement, the amounts borrowed bear an interest rate of TIBOR plus a spread that is determined by Fujitsu's current debt rating and Spansion Japan's non-consolidated net asset value as of the last day of its fiscal year. The





## Table of Contents

### *Advanced Mask Technology Center and Maskhouse Building Administration Guarantees*

The Advanced Mask Technology Center GmbH & Co. KG (AMTC) and Maskhouse Building Administration GmbH & Co., KG (BAC) are joint ventures formed by AMD, Infineon Technologies AG and DuPont Photomasks, Inc. for the purpose of constructing and operating a new advanced photomask facility in Dresden, Germany. To finance the project, BAC and AMTC entered into a \$146 million revolving credit facility and a \$91 million term loan in December 2002. Also in December 2002, in order to occupy the photomask facility, AMTC entered into a rental agreement with BAC. With regard to these commitments by BAC and AMTC, as of June 27, 2004, the Company guaranteed up to approximately \$39 million plus interest and expenses under the revolving loan, and up to approximately \$17 million, initially, under the rental agreement. The obligations under the rental agreement guarantee diminish over time through 2011 as the term loan is repaid. However, under certain circumstances of default by the other tenant of the photomask facility under its rental agreement with BAC and certain circumstances of default by more than one joint venture partner under its rental agreement guarantee obligations, the maximum potential amount of the Company's obligations under the rental agreement guarantee is approximately \$140 million. As of June 27, 2004, \$72 million was drawn under the revolving credit facility, and \$74 million was drawn under the term loan.

### *Warranties and Indemnities*

The Company offers a three-year limited warranty to end users for certain of its boxed microprocessor products and generally offers a one-year limited warranty only to direct purchasers for all other products. From time to time, the Company may offer an extended warranty under limited circumstances.

Changes in the Company's liability for product warranty during the six months ended June 27, 2004 and June 29, 2003 were as follows:

|   | Six Months Ended |                  |
|---|------------------|------------------|
|   | June 27,<br>2004 | June 29,<br>2003 |
|   | (Thousands)      |                  |
| Balance, beginning of period  | \$ 24,668        | \$ 19,369        |
| New warranties issued during the period   | 21,111           | 17,973           |
| Settlements during the period   | (8,257)          | (15,597)         |
| Changes in liability for pre-existing warranties during the period, including expirations | (10,064)         | (154)            |
| Balance, end of period  | \$ 27,458        | \$ 21,591        |

In addition to product warranties, the Company, from time to time in its normal course of business, indemnifies other parties with whom it enters into contractual relationships, including customers, lessors and parties to other transactions with the Company, with respect to certain matters. The Company has agreed to hold the other party harmless against specified losses, such as those arising from a breach of representations or covenants, third-party claims that the Company's products when used for their intended purpose(s) infringe the intellectual property rights of such third party or other claims made against certain

## [Table of Contents](#)

parties. It is not possible to determine the maximum potential amount of liability under these indemnification obligations due to the limited history of indemnification claims and the unique facts and circumstances that are likely to be involved in each particular claim and indemnification provision. Historically, payments made by the Company under these obligations have not been material.

### 9. Restructuring and Other Special Charges

#### *2002 Restructuring Plan*

In December 2002, the Company began implementing a restructuring plan (the 2002 Restructuring Plan) to further align its cost structure to the industry conditions at that time, including weak customer demand and industry-wide excess inventory. As a result of the 2002 Restructuring Plan, as of June 27, 2004, 1,781 employees had been terminated pursuant to the 2002 Restructuring Plan resulting in cumulative cash payments of \$59 million in severance and employee benefit costs. The remaining accrual of approximately \$0.8 million represents the severance benefit cost obligations for individuals who were included in the 2002 Restructuring Plan and who were individually notified in 2003 of their employment terminations, which will occur during the remainder of 2004.

During the second quarter of 2004, the Company adjusted the restructuring accrual related to the 2002 Restructuring Plan, which resulted in an additional \$2.5 million restructuring charge for the period. The adjustment was primarily related to a change in the Company's estimate of the liability associated with the remaining net lease payments on its abandoned facilities located in Sunnyvale, California.

With the exception of the facility exit costs consisting primarily of remaining lease payments on abandoned facilities, net of estimated sublease income, which are payable through 2011, the Company had substantially completed the activities associated with the 2002 Restructuring Plan as of March 28, 2004.

The following table summarizes activities under the 2002 Restructuring Plan from December 28, 2003 through June 27, 2004:

|                               | Severance and<br>Employee<br>Benefits | Exit and<br>Equipment<br>Decommission<br>Costs | Total      |
|-------------------------------|---------------------------------------|--|------------|
|                               |                                       | (Thousands)                                    |            |
| Accruals at December 28, 2003 | \$ 6,740                              | \$ 120,623                                     | \$ 127,363 |
| Q1 2004 cash payments         | (4,664)                               | (5,437)  | (10,101)   |
| Accruals at March 28, 2004    | 2,076                                 | 115,186  | 117,262    |
| Q2 2004 cash payments         | (1,481)                               | (5,224)  | (6,705)    |
| Q2 2004 non-cash adjustments  | 253                                   | 2,261  | 2,514      |
| Accruals at June 27, 2004     | \$ 848                                | \$ 112,223                                     | \$ 113,071 |

## [Table of Contents](#)

As of June 27, 2004 and December 28, 2003, \$92 million and \$99 million of the total restructuring accruals of \$113 million and \$128 million were included in Other Liabilities (long-term) on the consolidated balance sheets. (See Note 10.)

### 10. Other Long-Term Liabilities

The Company's other long-term liabilities at June 27, 2004 and December 28, 2003 consisted of:

|   | June 27,<br>2004 | December 28,<br>2003 |
|---|------------------|----------------------|
|   | (Thousands)      |                      |
| Dresden deferred grants and subsidies       | \$203,313        | \$ 262,941           |
| Customer deposits                           | —                | 17,500               |
| Deferred gain on sale leaseback of building | 22,648           | 23,488               |
| Restructuring accrual                       | 92,917           | 98,590               |
| Spansion LLC pension liability              | 25,900           | 26,242               |
| Other                                       | 4,511            | —                    |
|   | <u>\$349,289</u> | <u>\$ 428,761</u>    |

### 11. Spansion Japan Revolving Loan Agreement

In March 2004, Spansion Japan entered into a revolving credit facility agreement with certain Japanese financial institutions in the aggregate amount of 15 billion yen (approximately \$139 million as of June 27, 2004). The revolving facility consists of two tranches: tranche A, in the aggregate amount of up to nine billion yen (approximately \$84 million as of June 27, 2004), and tranche B, in the aggregate amount of up to six billion yen (approximately \$55 million as of June 27, 2004). Spansion Japan can draw under the facility until March 24, 2005. However, as described in more detail below, the total amount that Spansion Japan can draw is limited based on the value of Spansion Japan's accounts receivable from Fujitsu, which are pledged as security to the lenders.

Amounts borrowed under tranche A bear interest at a rate of TIBOR plus 0.55 percent. Amounts borrowed under tranche B bear interest at a rate of TIBOR plus 1.2 percent. Spansion Japan must first fully draw under tranche A prior to drawing amounts under tranche B. Borrowings must be used for working capital purposes and must be repaid no later than April 24, 2005. As of June 27, 2004, there were no borrowings outstanding under this facility.

Pursuant to the terms of the revolving facility agreement, Spansion Japan is required to comply with the following financial covenants:

- ensure that assets exceed liabilities as of the end of each fiscal year and each six-month (mid-year) period;
- maintain an adjusted tangible net worth (as defined in the agreement) at an amount not less than 60 billion yen (approximately \$557 million as of June 27, 2004) as of the last day of each fiscal quarter;

## Table of Contents

- maintain total net income plus depreciation, as of the last day of each fiscal period, as follows:

| <u>Period</u>                 | <u>Amount</u> |
|-------------------------------|---------------|
| Second fiscal quarter of 2004 | \$ 68 million |
| Fiscal year 2004              | \$213 million |

- ensure that, as of the last day of any fiscal quarter, the ratio of (a) net income plus depreciation to (b) the sum of interest expenses plus the amount of scheduled debt repayments plus capital expenditures for its facilities located in Aizu-Wakamatsu, Japan, for such period, is not less than the following percentages:

| <u>Period</u>                            | <u>Percentage</u> |
|--|-------------------|
| Second fiscal of quarter 2004            | 110%              |
| Third and fourth fiscal quarters of 2004 | 120%              |

As of June 27, 2004, Spansion Japan was in compliance with these financial covenants.

As security for amounts outstanding under the revolving facility, Spansion Japan pledged its accounts receivable from Fujitsu. The accounts receivable are held in trust pursuant to the terms of a trust agreement. Under the trust agreement, Spansion Japan is required to maintain the value of its accounts receivable at specified thresholds (as defined by the trust agreement), based upon the amounts outstanding under tranche A and tranche B. In addition, the trustee collects payments from Fujitsu into a separate trust account and releases these amounts to Spansion Japan, subject to the calculated thresholds, upon instruction from the agent for the lenders. At any time when the accounts receivable balance in the trust account is less than the required thresholds, Spansion Japan is required to do one of the following to cure the shortfall:

- provide additional cash to the trust; or
- repay a specified portion of the outstanding loans.

Amounts outstanding under the revolving credit facility may become automatically due and payable upon the occurrence of specified events with respect to Spansion Japan, including: filings or proceedings in bankruptcy, failure to pay any obligations under the revolving credit facility that have become due, failure to pay other third-party indebtedness where such debt exceeds 200 million yen (approximately \$2 million as of June 27, 2004), or if the value of the accounts receivable from Fujitsu held in trust is below the required thresholds and such shortfall is not remedied within three business days. In addition, amounts outstanding under the revolving credit facility may become automatically due and payable upon the occurrence of specified events with respect to Fujitsu including: filings or proceedings in bankruptcy, default by Fujitsu with respect to payments to Spansion Japan or other obligations under their purchase and sale agreement, or default by Fujitsu with respect to other third-party indebtedness where such debt exceeds one billion yen (approximately \$9 million as of June

[Table of Contents](#)

27, 2004). As of June 27, 2004, the amount of accounts receivable held in the trust was approximately \$235 million.

Because most amounts under the Spansion Japan Revolving Loan are denominated in yen, the dollar amounts stated above are subject to change based on applicable exchange rates. The Company used the exchange rate at June 27, 2004 of 107.71 yen to one U.S. dollar to translate the amounts denominated in yen into U.S. dollars.

12. Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements

On April 21, 2004, AMD Fab 36 KG entered into a term loan agreement and other related agreements (the Fab 36 Loan Agreements) with a consortium of banks led by Dresdner Bank AG, a German financial institution, to finance the purchase of equipment and tools required to construct and operate Fab 36. AMD Fab 36 KG pledged substantially all of its current and future assets as security under the Fab 36 Loan Agreements. The Company has guaranteed the obligations of AMD Fab 36 KG to the lenders under the Fab 36 Loan Agreements and repayment of grants and allowances by AMD Fab 36 KG, should such repayment be required pursuant to the terms of the subsidies provided by the Federal Republic of Germany and the State of Saxony. Pursuant to the terms of the guarantee, the Company has to comply with specified adjusted tangible net worth and EBITDA financial covenants if the sum of the Company and its subsidiaries' cash, cash equivalents and short-term investments, less the amount outstanding under any third-party revolving credit facility or term loan agreement with an original maturity date for amounts borrowed of up to one year (group consolidated cash), declines below the following amounts:

| <b>Amount</b><br>(In thousands) | <b>if Moody's<br/>Rating is at least</b> |     | <b>if Standard &amp; Poor's Rating<br/>is at least</b> |
|---------------------------------|--|-----|--|
| USD500,000                      | B1 or lower                              | and | B+ or lower  |
| USD425,000                      | Ba3                                      | and | BB-  |
| USD400,000                      | Ba2                                      | and | BB   |
| USD350,000                      | Ba1                                      | and | BB+  |
| USD300,000                      | Baa3 or better                           | and | BBB-or better  |

As of June 27, 2004, group consolidated cash was greater than \$500 million and, therefore, the preceding financial covenants were not applicable.

---

## [Table of Contents](#)

Also on April 21, 2004, AMD, AMD Fab 36 KG, AMD Fab 36 LLC, AMD Fab 36 Holding GmbH, a German company and wholly-owned subsidiary of AMD that owns substantially all of the Company's limited partnership interest in AMD Fab 36 KG, and AMD Fab 36 Admin GmbH, a German company and wholly owned subsidiary of AMD Fab 36 Holding that owns the remainder of the Company's limited partnership interest in AMD Fab 36 KG, (collectively referred to as the AMD companies) entered into a series of agreements (the partnership agreements) with the unaffiliated limited partners of AMD Fab 36 KG, Leipziger Messe GmbH, a nominee of the State of Saxony, and Fab 36 Beteiligungs GmbH, an investment consortium arranged by M+W Zander Facility Engineering GmbH, the general contractor for the project, relating to the rights and obligations with respect to their equity and membership interests in AMD Fab 36 KG. The partnership, AMD Fab 36 KG, is established for an indefinite period of time. A partner may terminate its participation in partnership by giving twelve months advance notice to the other partners. The termination becomes effective at the end of the year during which the notice was given. Other than for good cause, a partner's termination will not be effective before December 31, 2015.

Because most of the amounts under the Fab 36 Loan Agreements and the partnership agreements are denominated in euros, the dollar amounts are subject to change based on applicable exchange rates. The Company used the exchange rate at June 27, 2004, of 0.823 euro to one U.S. dollar, to translate the amounts denominated in euros into U.S. dollars.

The consortium of banks referred to above will make available up to \$851 million in loans to AMD Fab 36 KG upon its achievement of specified milestones, including attainment of "technical completion" at Fab 36, which requires certification by the banks' technical advisor that AMD Fab 36 KG has a wafer fabrication process suitable for high volume production of advanced microprocessors and has achieved specified levels of average wafer starts per week and average wafer yields at Fab 36, as well as cumulative capital expenditures of approximately \$1.2 billion. The amounts outstanding under the Fab 36 Loan Agreements are repayable in quarterly installments commencing on September 30, 2007 and terminating on March 31, 2011.

The partnership agreements set forth each limited partner's aggregate capital contribution to AMD Fab 36 KG and the milestones for such contributions. Pursuant to the terms of the partnership agreements, the Company, through AMD Fab 36 Holding and AMD Fab 36 Admin, agreed to provide an aggregate of \$711 million; Leipziger Messe agreed to provide an aggregate of \$243 million and Fab 36 Beteiligungs agreed to provide an aggregate of \$146 million. The capital contributions of Leipziger Messe and Fab 36 Beteiligungs are comprised of limited partnership contributions and silent partnership contributions. The unaffiliated partners' contributions are due at various dates upon the achievement of milestones relating to the construction and operation of Fab 36. The partnership agreements also specify that the unaffiliated partners receive a guaranteed rate of return of between 11 percent to 13 percent per annum of their total investment depending upon the monthly wafer output of Fab 36. The Company guaranteed these payments by AMD Fab 36 KG.

Pursuant to the terms of the partnership agreements and subject to the prior consent of the Federal Republic of Germany and the State of Saxony, AMD Fab 36 Holding and AMD Fab

---

## [Table of Contents](#)

36 Admin have a call option over the limited partnership portion of the interests held by Leipziger Messe and Fab 36 Beteiligungs (the limited partnership interests), first exercisable three and one-half years after the relevant partner has completed the applicable capital contribution and every three years thereafter. Also, commencing five years after completion of the relevant partner's capital contribution, Leipziger Messe and Fab 36 Beteiligungs each have the right to sell their limited partnership interest to third parties (other than competitors), subject to a right of first refusal held by AMD Fab 36 Holding and AMD Fab 36 Admin, or to put their limited partnership interest to AMD Fab 36 Holding and AMD Fab 36 Admin. The put option is thereafter exercisable every three years. Leipziger Messe and Fab 36 Beteiligungs also have a put option in the event they are outvoted at AMD Fab 36 KG partners' meetings with respect to certain specified matters such as increases in the partners' capital contributions beyond those required by the partnership agreements, investments significantly in excess of the business plan, or certain dispositions of the limited partnership interests of AMD Fab 36 Holding and AMD Fab 36 Admin. The purchase price under the put option is the partner's capital account balance plus accumulated or accrued profits due to such limited partner. The purchase price under the call option is the same amount, plus a premium of \$4.3 million to Leipziger Messe or \$2.6 million to Fab 36 Beteiligungs. The right of first refusal price is the lower of the put option price or the price offered by the third party that triggered the right. The Company guaranteed the payments under the put options.

In addition, AMD Fab 36 Holding and AMD Fab 36 Admin are obligated to repurchase the silent partnership portion of Leipziger Messe's and Fab 36 Beteiligungs' contributions (the silent partnership interests) over time. Specifically, AMD Fab 36 Holding and AMD Fab 36 Admin are required to repurchase Leipziger Messe's silent partnership interest of \$97 million in annual 25 percent installments commencing one year after Leipziger Messe has completed its applicable contributions and Fab 36 Beteiligungs' silent partnership interest of \$73 million in annual 20 percent installments commencing one year after Fab 36 Beteiligungs has completed its applicable contributions.

For accounting and financial reporting purposes under United States generally accepted accounting principles, the Company will initially classify the silent partnership contributions as long-term debt based on their fair value because of the mandatory redemption features described in the prior paragraph. Each accounting period, the Company will increase the ultimate redemption value of the silent partnership contributions by the guaranteed rate of return of between 11 percent to 13 percent. The Company will treat this increase as interest expense.

The remaining capital contributions that AMD Fab 36 KG expects to receive from Leipziger Messe and Fab 36 Beteiligungs, or the limited partnership contributions, are subject to the put and call provisions referenced above. These contributions are not mandatorily redeemable, but rather are subject to redemption outside of the control of AMD Fab 36 Holding and AMD Fab 36 Admin. Upon consolidation, the Company will initially record these contributions as minority interest, based on their fair value. Each accounting period, the Company will increase the ultimate redemption value of these contributions by the guaranteed rate of return of between 11 percent to 13 percent. The Company will treat this increase as minority interest allocation. No separate accounting is required for the put and call options because they are not freestanding instruments and not considered as derivatives.

---

## Table of Contents

under SFAS 133, Accounting for Derivative Instruments and Hedging Activities. However, in the event of exercise of the call option by the AMD Fab 36 Holding and AMD Fab 36 Admin, the call premium referenced above will be recorded as additional minority interest allocation.

The Fab 36 Loan Agreements also require that the Company:

- provide funding to AMD Fab 36 KG if cash shortfalls occur, including funding shortfalls in government subsidies resulting from any defaults caused by AMD Fab 36 KG or its affiliates; and
- guarantee 100 percent of AMD Fab 36 KG's obligations under the Fab 36 Loan Agreements until the bank loans are repaid in full.

AMD Fab 36 KG would be in default under the Fab 36 Loan Agreements if the Company or any of the AMD companies fail to comply with certain obligations thereunder or upon the occurrence of certain events and if, after the occurrence of the event, the lenders determine that their legal or risk position is adversely affected. Circumstances that could result in a default include:

- the failure of any limited partner to make contributions to AMD Fab 36 KG as required under the partnership agreements or the Company's failure to provide loans to AMD Fab 36 KG as required under the Fab 36 Loan Agreements;
- the failure to pay any amount due under the Fab 36 Loan Agreements within five days of the due date;
- the occurrence of any event which the lenders reasonably believe has had or is likely to have a material adverse effect on the business, assets or condition of AMD Fab 36 KG or the Company or their ability to perform under the Fab 36 Loan Agreements;
- filings or proceedings in bankruptcy or insolvency with respect to the Company, AMD Fab 36 KG or any limited partner;
- the occurrence of a change in control (as defined in the Fab 36 Loan Agreements) of the Company;
- AMD Fab 36 KG's noncompliance with certain affirmative and negative covenants, including restrictions on payment of profits, dividends or other distributions except in limited circumstances and restrictions on incurring additional indebtedness, disposing of assets and repaying subordinated debt; and
- AMD Fab 36 KG's noncompliance with certain financial covenants, including minimum tangible net worth, minimum interest cover ratio, loan to fixed asset value ratio and a minimum cash covenant.

In general, any default with respect to other indebtedness of AMD Fab 36 KG that results in recourse to AMD Fab 36 KG of more than \$6 million or any default with respect to indebtedness made or guaranteed by the Company that results in recourse to the Company of more than \$24 million, and that is not cured, would result in a cross-default under the Fab 36 Loan Agreements.

The occurrence of a default under the Fab 36 Loan Agreements would permit the lenders to accelerate the repayment of all amounts outstanding. In addition, the occurrence of a default under these agreements would likely result in a cross-default under the Indentures governing the Company's 4.75% Debentures and 4.50% Notes.



**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*Cautionary Statement Regarding Forward-Looking Statements*

*The statements in this report include forward-looking statements. These forward-looking statements are based on current expectations and beliefs and involve numerous risks and uncertainties that could cause actual results to differ materially from expectations. These forward-looking statements should not be relied upon as predictions of future events as we cannot assure you that the events or circumstances reflected in these statements will be achieved or will occur. You can identify forward-looking statements by the use of forward-looking terminology, including "believes," "expects," "may," "will," "should," "seeks," "approximately," "intends," "plans," "pro forma," "estimates," or "anticipates" or the negative of these words and phrases or other variations of these words and phrases or comparable terminology. The forward-looking statements relate to, among other things, our ability to be profitable; our sales and operating results; anticipated cash flows; capital expenditures; gross margins; adequacy of resources to fund operations and capital investments; marketing, general and administrative expenditures; customer and market acceptance of our AMD Opteron™ and AMD Athlon™ 64 microprocessors, and the AMD64 technology upon which they are based; customer and market acceptance of our new AMD Sempron™ microprocessors; customer and market acceptance of Spansion™ Flash memory products based on MirrorBit™ and floating gate technology; the ability to produce our microprocessor and Flash memory products in the volumes required by the market at acceptable yields and on a timely basis; our ability to maintain the level of investment in research and development and capacity that is required to remain competitive; our ability to transition to new products and manufacturing process technologies in a timely and effective way; our ability to achieve cost reductions in the amounts and in the timeframes anticipated; our ability to maintain or improve average selling prices of our products despite aggressive marketing and pricing strategies of our competitors; our ability, and the ability of third parties, to provide timely infrastructure solutions, such as motherboards and chipsets, to support our microprocessors; the process technology transitions in our wafer fabrication facilities in Dresden, Germany (Fab 30), Austin, Texas (Fab 25) and Aizu-Wakamatsu, Japan (JV1, JV2 and JV3); and the financing and construction of our 300-millimeter wafer fabrication facility (Fab 36) in Dresden, Germany. For a discussion of the factors that could cause actual results to differ materially from the forward-looking statements, see the "Financial Condition" and "Risk Factors" sections set forth in "Management's Discussion and Analysis of Financial Condition and Results of Operations" beginning on page 24 below and such other risks and uncertainties as set forth below in this report or detailed in our other Securities and Exchange Commission reports and filings.*

The following discussion should be read in conjunction with the unaudited condensed consolidated financial statements and related notes included in this report and our audited consolidated financial statements and related notes as of December 28, 2003 and December 29, 2002, and for each of the three years in the period ended December 28, 2003 as filed in our Annual Report on Form 10-K for the year ended December 28, 2003. Certain prior period amounts have been reclassified to conform to the current period presentation.

---

## [Table of Contents](#)

On June 28, 2004, we changed the legal name of FASL LLC to Spansion LLC. We also changed the legal names of Spansion LLC's subsidiaries by replacing "FASL" with "Spansion" in each instance.

AMD, Advanced Micro Devices, AMD Athlon, AMD Duron, AMD Geode, AMD Opteron, and AMD Sempron are either our trademarks or our registered trademarks in the United States and/or other jurisdictions. Spansion, FASL, MirrorBit, and combinations thereof, are trademarks of Spansion LLC in the United States and/or other jurisdictions. Microsoft, Windows, Windows NT and MS-DOS are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other jurisdictions. MIPS is a registered trademark of MIPS Technologies, Inc. in the United States and/or other jurisdictions. Other terms used to identify companies and products may be trademarks of their respective owners.

### **Overview**

We design, manufacture and market industry-standard digital integrated circuits that are used in diverse product applications such as desktop and mobile PCs, workstations and servers, communications equipment, and automotive and consumer electronics. Our products include microprocessors, Flash memory products, and Personal Connectivity Solutions products, which consists of our low power, high performance x86 and MIPS® architecture-based embedded microprocessors.

Our net sales for the second quarter of 2004 improved by two percent compared with the first quarter of 2004. Although the second quarter is typically a seasonally down quarter, this improvement was driven primarily by an increase in sales of our Flash memory products, partially offset by a decrease in sales of our microprocessor products. Flash memory sales grew in all major regions and in both the embedded and wireless markets. Microprocessor sales decreased primarily due to a five percent decrease in average selling prices, which, in turn, was due primarily to a decrease in average selling prices of our AMD Athlon XP products. However, during the second quarter of 2004, sales of our AMD64-based microprocessor products increased by approximately 50 percent from the first quarter of 2004. In particular, sales increased in both the server and mobile segments, which represented the fastest growing segments in Computation Products. Increased sales of our AMD64-based microprocessor products were largely driven by enterprise demand and consumer sales of notebook PCs.

For the remainder of 2004, we believe critical success factors include: increasing market acceptance of 64-bit computing; strengthening our relationship with tier-one customers and establishing relationships with new tier-one customers; successfully developing and transitioning to the latest manufacturing process technologies for both our microprocessor and Flash memory products; developing and introducing new microprocessor products for the mobile, server and workstation markets on a timely basis and increasing our share of those markets; expanding our participation in emerging global markets, including China, Latin America, India, and Eastern Europe; improving our share of the Flash memory market, including increasing the adoption of MirrorBit technology; maintaining or increasing average selling prices of our Flash memory and microprocessor products; and maximizing the synergies of Spansion LLC.

---

## [Table of Contents](#)

We have two reportable segments:

- the Computation Products segment, which includes microprocessor products for desktop and mobile PCs, servers and workstations and chipset products; and
- the Memory Products segment, which includes Spansion Flash memory solutions.

We review and assess operating performance using segment net sales and operating income before interest, taxes and minority interest. The minority interest adjustment is discussed in the paragraph below. These performance measures include the allocation of expenses to the operating segments based on management's judgment. Prior to the third quarter of 2003, we had two reportable segments: the Core Products and Foundry Services segments. Primarily as a result of the formation of Spansion LLC, effective as of June 30, 2003, we re-evaluated our reportable segments, and beginning in the third quarter of 2003, we changed our reportable segments to the Computation Products segment and the Memory Products segment. We believe that separate reporting of these operating segments, given our focus on Spansion LLC as an operating entity with its own brand—Spansion, provides more useful information.

In addition to our reportable segments, we also have the All Other category that is not a reportable segment, but rather includes other small operating segments that are neither individually nor in the aggregate greater than ten percent of our consolidated net sales or assets. This category also includes certain operating expenses and credits that are not allocated to the operating segments.

Prior period segment information has been reclassified to conform to the current period presentation. Because Spansion LLC did not exist prior to June 30, 2003, the results of our operations for periods prior to the third quarter of 2003 do not include the consolidation of Spansion LLC's results of operations. Accordingly, our operating results for the quarter and six months ended June 27, 2004 are not fully comparable with our results for the quarter and six months ended June 29, 2003 and the segment operating information for the Memory Products segment for the quarter and six months ended June 27, 2004 is not fully comparable to the reclassified segment information for the quarter and six months ended June 29, 2003. Because we have a 60 percent controlling interest in Spansion LLC, Fujitsu's 40 percent share in the net income (loss) of Spansion LLC is reflected as a minority interest adjustment to our consolidated financial statements. This minority interest adjustment does not correspond to Memory Products segment operating income (loss) because Memory Products segment operating income (loss) includes operations incremental to those of Spansion LLC. In addition, the minority interest calculation is based on Spansion LLC's net income (loss) rather than operating income (loss).

We intend the discussion of our financial condition and results of operations that follows to provide information that will assist you in understanding our financial statements, the changes in certain key items in those financial statements from year to year and quarter to quarter, the primary factors that resulted in those changes, and how certain accounting principles, policies and estimates affect our financial statements.

[Table of Contents](#)**Critical Accounting Policies**

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts in our consolidated financial statements. We evaluate our estimates on an on-going basis, including those related to our net sales, inventories, asset impairments, restructuring charges, income taxes and commitments and contingencies. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Although actual results have historically been reasonably consistent with management's expectations, the actual results may differ from these estimates or our estimates may be affected by different assumptions or conditions.

Management believes there have been no significant changes during the quarter ended June 27, 2004 to the items that we disclosed as our critical accounting policies and estimates in Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 28, 2003.

**RESULTS OF OPERATIONS**

We use a 52- to 53-week fiscal year ending on the last Sunday in December. The quarters and six months ended June 27, 2004 and June 29, 2003 each included 13 weeks and 26 weeks.

The following is a summary of our net sales and operating income (loss) by segment and category for the periods presented below:

|                                      | Quarter Ended    |                   |                  | Six Months Ended |                  |
|--------------------------------------|------------------|-------------------|------------------|------------------|------------------|
|                                      | June 27,<br>2004 | March 28,<br>2004 | June 29,<br>2003 | June 27,<br>2004 | June 29,<br>2003 |
|                                      | (Millions)       |                   |                  |                  |                  |
| <b>Net Sales</b>                     |                  |                   |                  |                  |                  |
| Computation Products                 | \$ 554           | \$ 571            | \$ 406           | \$ 1,125         | \$ 876           |
| Memory Products                      | 673              | 628               | 211              | 1,301            | 429              |
| All Other                            | 35               | 37                | 28               | 72               | 55               |
| <b>Total Net Sales</b>               | <b>\$ 1,262</b>  | <b>\$ 1,236</b>   | <b>\$ 645</b>    | <b>\$ 2,498</b>  | <b>\$ 1,360</b>  |
| <b>Operating Income (Loss)</b>       |                  |                   |                  |                  |                  |
| Computation Products                 | \$ 57            | \$ 67             | \$ (52)          | \$ 125           | \$ (105)         |
| Memory Products                      | 45               | 14                | (74)             | 59               | (137)            |
| All Other                            | (30)             | (20)              | 2                | (50)             | (7)              |
| <b>Total Operating Income (Loss)</b> | <b>\$ 72</b>     | <b>\$ 61</b>      | <b>\$ (124)</b>  | <b>\$ 134</b>    | <b>\$ (249)</b>  |

---

[Table of Contents](#)

**Computation Products**

Computation Products net sales of \$554 million in the second quarter of 2004 decreased three percent compared to net sales of \$571 million in the first quarter of 2004. The decrease in net sales was primarily due to a five percent decrease in average selling prices of our microprocessor products, due primarily to a decrease in average selling prices of our AMD Athlon XP products, partially offset by increased unit sales of our higher priced AMD Opteron and AMD Athlon 64 microprocessors, and a one percent increase in overall processor unit shipments.

Computation Products net sales of \$554 million in the second quarter of 2004 increased 36 percent compared to the second quarter of 2003 primarily as a result of an eight percent increase in unit shipments due to improving market conditions across all geographic regions and a 27 percent increase in average selling prices of our microprocessor products. Average selling prices of our microprocessor products increased primarily as a result of sales of our higher priced AMD Opteron and AMD Athlon 64 microprocessors, which we introduced in April 2003 and September 2003.

Computation Products net sales of \$1,125 million in the first six months of 2004 increased 28 percent compared to \$876 million in the first six months of 2003. Net sales increased primarily as a result of a 26 percent increase in average selling prices of our microprocessor products, primarily as a result of sales of our higher priced AMD Opteron and AMD Athlon 64 microprocessors, and a two percent increase in unit shipments, primarily as a result of improving market conditions across all geographic regions.

Computation Products operating income of \$57 million in the second quarter of 2004 decreased \$10 million compared to operating income of \$67 million in the first quarter of 2004 primarily due to the decrease in net sales. Computation Products operating income in the second quarter of 2004 improved by \$109 million compared to an operating loss of \$52 million in the second quarter of 2003 primarily as a result of improving market conditions across all geographic regions, causing an eight percent increase in unit shipments, and also due to a 27 percent increase in average selling prices of our microprocessor products.

Computation Products operating income of \$125 million in the first six months of 2004 improved from an operating loss of \$105 million in the first six months of 2003. This improvement was primarily due to an increase in net sales. Net sales increased as a result of a 26 percent increase in average selling prices of our microprocessor products, primarily as a result of sales of our higher priced AMD Opteron and AMD Athlon 64 microprocessors, and a two percent increase in unit shipments, primarily due to improving market conditions across all geographic regions.

**Memory Products**

Memory Products net sales of \$673 million in the second quarter of 2004 increased seven percent from net sales of \$628 million in the first quarter of 2004. The increase in net sales

---

## [Table of Contents](#)

was primarily attributable to an increase of approximately seven percent in unit shipments due primarily to increased sales in Asia.

Memory Products net sales of \$673 million increased 220 percent in the second quarter of 2004 compared to the second quarter of 2003. The increase in net sales was primarily attributable to the effect of consolidating the operating results of Spansion LLC, which include Spansion LLC's sales to Fujitsu, as well as increased demand for Flash memory products. Further quantification of the breakdown in the increase in net sales is not practical due to the reorganization of customers and geographical sales territories between AMD and Fujitsu.

Memory Products net sales of \$1,301 million in the first six months of 2004 increased 203 percent compared to \$429 million in the first six months of 2003, primarily due to the effect of consolidating the results of Spansion LLC, which include Spansion LLC's sales to Fujitsu, as well as increased demand for Flash memory products. Further quantification of the breakdown in the sales increase is not practical due to the reorganization of customers and geographical sales territories between AMD and Fujitsu.

Memory Products operating income of \$45 million in the second quarter of 2004 improved by \$31 million compared to operating income of \$14 million in the first quarter of 2004. The improvement was primarily due to an increase in net sales of seven percent and benefits realized from the integration of our and Fujitsu's Flash memory operations. Memory Products operating income improved by \$119 million from the second quarter of 2003. Quantification of the improvement in operating results is not practical due to the consolidation of Spansion LLC's results of operations on June 30, 2003, which include sales to Fujitsu.

Memory Products operating income of \$59 million in the first six months of 2004 improved from an operating loss of \$137 million in the first six months of 2003 primarily due to the effect of consolidating the operating results of Spansion LLC, which include Spansion LLC's sales to Fujitsu. Quantification of the improvement in operating results is not practical due to the consolidation of Spansion LLC's results of operations on June 30, 2003, which include sales to Fujitsu.

### **All Other Category**

All Other net sales of \$35 million in the second quarter of 2004 remained relatively flat compared to net sales of \$37 million in the first quarter of 2004 and consisted primarily of net sales of our Personal Connectivity Solutions products.

All Other net sales of \$35 million in the second quarter of 2004 increased 21 percent compared to net sales of \$28 million in the second quarter of 2003. The increase was primarily due to sales of AMD Geode products, a family of microprocessor products that we acquired from National Semiconductor Corporation in August 2003.

[Table of Contents](#)

All Other net sales of \$72 million in the first six months of 2004 increased 31 percent compared to \$55 million in the first six months of 2003, primarily due to sales of AMD Geode products.

All Other operating losses of \$30 million in the second quarter of 2004 increased by \$10 million compared to the first quarter of 2004, primarily due to a \$6 million inventory write-down related to certain Personal Connectivity Solutions products. We wrote down this inventory because we revised our estimate after evaluating demand for these products.

All Other operating losses of \$50 million in the first six months of 2004 increased from an operating loss of \$7 million in the first six months of 2003 primarily due to profit sharing and bonus expenses of approximately \$20 million, a one-time retirement benefit expense of \$5 million and certain corporate research and development projects totaling approximately \$7 million which are not allocated to the operating segments, as well as a \$7 million increase in research and development expenses related to our Personal Connectivity Solutions products and a \$6 million inventory write-down related to certain Personal Connectivity Solutions products referenced above.

**Comparison of Expenses, Gross Margin Percentage, Interest and Taxes**

The following table is a summary of certain consolidated statement of operations data as a percentage of net revenue for the periods indicated:

|  | Quarters Ended                    |     |                |     |               |     | Six Months Ended |     |               |     |
|--|-----------------------------------|-----|----------------|-----|---------------|-----|------------------|-----|---------------|-----|
|  | June 27, 2004                     |     | March 28, 2004 |     | June 29, 2003 |     | June 27, 2004    |     | June 29, 2003 |     |
|  | (Millions except for percentages) |     |                |     |               |     |                  |     |               |     |
| Cost of sales                                | \$ 783                            | 62% | \$ 769         | 62% | \$ 425        | 66% | \$ 1,552         | 62% | \$ 922        | 68% |
| Gross margin                                 | 38%                               |     | 38%            |     | 34%           |     | 38%              |     | 32%           |     |
| Research and development                     | \$ 225                            | 18% | \$ 226         | 18% | \$ 209        | 32% | \$ 451           | 18% | \$ 412        | 30% |
| Marketing, general and administrative        | 179                               | 14% | 180            | 15% | 135           | 21% | 359              | 14% | 273           | 20% |
| Restructuring and other special charges, net | 3                                 | 0%  | —              | 0%  | —             | 0%  | 3                | 0%  | 2             | 0%  |
| Interest income and other, net               | (2)                               | 0%  | 11             | 1%  | 5             | 1%  | 9                | 0%  | 12            | 1%  |
| Interest expense                             | 28                                | 2%  | 30             | 2%  | 26            | 4%  | 58               | 2%  | 52            | 4%  |
| Income tax provision                         | 4                                 | 0%  | 2              | 0%  | —             | 0%  | 6                | 0%  | 3             | 0%  |

The gross margin percentage of 38 percent in the second quarter of 2004 remained flat from the first quarter of 2004 and improved from 34 percent in the second quarter of 2003. The increase in gross margin from the second quarter of 2003 was primarily due to a richer product mix and higher average selling prices for both our microprocessors and Flash memory products. Further quantification of changes in the improvement in gross margin percentage is not practical due to the consolidation of Spansion LLC's operating results from June 30, 2003. The gross margin percentage of 38 percent in the first six months of 2004 improved from 32 percent in the first six months of 2003. The improvement was primarily due to richer product mix, higher average selling prices for both our microprocessors and Flash memory products and cost reductions from the 2002 Restructuring Plan and other cost reduction initiatives. Further quantification of changes in the improvement in gross margin

---

[Table of Contents](#)

percentage is not practical due to the consolidation of Spansion LLC's operating results from June 30, 2003.

We amortize capital grants and allowances and interest subsidies that we receive from the State of Saxony and the Federal Republic of Germany for Fab 30 as they are earned. The amortization of these grants and subsidies is recognized as credits to cost of sales. The credits to cost of sales totaled \$17.0 million in the second quarter of 2004, \$13.6 million in the first quarter of 2004 and \$11.1 million in the second quarter of 2003. In the first six months of 2004, such credits totaled \$30.6 million and in the first six months of 2003, such credits totaled \$22.0 million. The fluctuations in these credits have not significantly impacted our gross margins.

Research and development expenses of \$225 million in the second quarter of 2004 were flat compared to \$226 million in the first quarter of 2004 and increased 8 percent compared to \$209 million in the second quarter of 2003. Research and development expenses of \$451 million in the first six months of 2004 increased 10 percent compared to \$412 million in the first six months of 2003. These increases were due primarily to an increase in expenses as a result of the formation of Spansion LLC, increased research and development activities related to newer versions of our AMD Opteron and AMD Athlon 64 microprocessors and increased research and development activities associated with Personal Connectivity Solutions products.

From time to time, we also apply for and obtain subsidies from the State of Saxony and the Federal Republic of Germany for certain research and development projects. We record the research and development subsidies as a reduction of research and development expenses when all conditions and requirements are met. The credits to research and development expenses totaled \$4.2 million in the second quarter of 2004, \$5.3 million in the first quarter of 2004 and \$4.7 million in the second quarter of 2003. In the first six months of 2004, credits totaled \$9.5 million and in the first six months of 2003, credits totaled \$10.1 million.

Marketing, general and administrative expenses of \$179 million in the second quarter of 2004 remained flat compared with \$180 million in the first quarter of 2004, and increased 32 percent compared to \$135 million in the second quarter of 2003. Marketing, general and administrative expenses of \$359 million in the first six months of 2004 increased 31 percent compared to \$273 million in the first six months of 2003. These increases were primarily due to an increase in expenses as a result of the formation of Spansion LLC and increased marketing efforts for our AMD Opteron and AMD Athlon 64 microprocessors.

In December 2002, we began implementing the 2002 Restructuring Plan to further align our cost structure to the industry conditions at that time, including weak customer demand and industry-wide excess inventory. As a result of the 2002 Restructuring Plan, as of June 27, 2004, 1,781 employees had been terminated pursuant to the 2002 Restructuring Plan resulting in cumulative cash payments of \$59 million in severance and employee benefit costs. The remaining accrual of approximately \$0.8 million represents the severance benefit cost obligations for individuals who were included in the 2002 Restructuring Plan and who



## [Table of Contents](#)

were individually notified in 2003 of their employment terminations, which will occur during the remainder of 2004.

During the second quarter of 2004, we adjusted the restructuring accrual related to the 2002 Restructuring Plan, which resulted in an additional \$2.5 million restructuring charge for the period. The adjustment was primarily related to a change in our estimate of the liability associated with the remaining net lease payments on our abandoned facilities in Sunnyvale, California.

With the exception of the facility exit costs consisting primarily of remaining lease payments on abandoned facilities, net of estimated sublease income, which are payable through 2011, we substantially completed the activities associated with the 2002 Restructuring Plan as of March 28, 2004. As a result of the 2002 Restructuring Plan, we realized overall cumulative cost reductions of approximately \$238 million as of June 27, 2004.

The following table summarizes activities under the 2002 Restructuring Plan from December 28, 2003 through June 27, 2004:

|                               | Severance and<br>Employee<br>Benefits | Exit and<br>Equipment<br>Decommission<br>Costs | Total      |
|-------------------------------|---------------------------------------|--|------------|
|                               |                                       | (Thousands)                                    |            |
| Accruals at December 28, 2003 | \$ 6,740                              | \$ 120,623                                     | \$ 127,363 |
| Q1 2004 cash payments         | (4,664)                               | (5,437)  | (10,101)   |
| Accruals at March 28, 2004    | 2,076                                 | 115,186  | 117,262    |
| Q2 2004 cash payments         | (1,481)                               | (5,224)  | (6,705)    |
| Q2 2004 non-cash adjustments  | 253                                   | 2,261  | 2,514      |
| Accruals at June 27, 2004     | \$ 848                                | \$ 112,223                                     | \$ 113,071 |

Interest income and other, net, of \$2 million net expense in the second quarter of 2004 decreased from an income of \$11 million in the first quarter of 2004 primarily due to a loss of approximately \$6 million during the second quarter of 2004 as a result of the mark-to-market of certain of our foreign currency forward contracts being used as economic hedges of forecasted capital contributions to AMD Fab 36 KG, which do not qualify as accounting hedges, compared to a gain of approximately \$7 million from sales of equity investments in the first quarter of 2004. Interest income and other, net, decreased from \$5 million in the second quarter of 2003 primarily due to the hedging loss referenced above and lower investment balances. Interest income and other, net, of \$9 million in the first six months of 2004 decreased from \$12 million in the first six months of 2003 primarily due to lower investment balances.

Interest expense of \$28 million in the second quarter of 2004 decreased slightly from \$30 million in the first quarter of 2004 primarily due to the capitalization of approximately \$2 million of interest in the second quarter of 2004 relating to our Fab 36 project. Interest expense increased from \$26 million in the second quarter of 2003 primarily due to additional interest expense of \$2.5 million resulting from new debt assumed by Spansion LLC and its

---

## [Table of Contents](#)

subsidiaries after the formation of Spansion LLC, as well as debt consolidated on our financial statements incurred by the Manufacturing Joint Venture prior to the formation of Spansion LLC. Interest expense of \$58 million in the first six months 2004 increased from \$52 million in the first six months of 2003 primarily due to the Spansion LLC transaction, which resulted in additional interest expense of \$7 million.

### **Income Taxes**

We recorded an income tax provision of approximately \$4 million in the second quarter of 2004 and \$2 million in the first quarter of 2004. We recorded no income tax benefit against our pre-tax losses in the second quarter of 2003. The income tax provision recorded in the second and first quarters of 2004 was primarily for taxes due on income generated in certain foreign jurisdictions. The effective tax rates for the quarters ended June 27, 2004, March 28, 2004 and June 29, 2003 were ten percent, five percent and zero percent. The effective tax rate for the six months ended June 27, 2004 was approximately seven percent. The \$3 million income tax provision for the six months ended June 29, 2003 was primarily for taxes due on income generated in certain state and foreign tax jurisdictions.

### **Other Items**

International sales as a percent of net sales were 80 percent in the second quarter of 2004, 82 percent in the first quarter of 2004 and 74 percent in the second quarter of 2003. In the second quarter of 2003, sales to Latin America, constituting approximately three percent of total net sales, were originally reported as domestic sales and have been reclassified as international sales. During the second quarter of 2004, approximately 28 percent of our net sales were denominated in currencies other than the U.S. dollar, primarily the Japanese yen, as compared to 27 percent during the first quarter of 2004 and four percent during the second quarter of 2003. The increase from the second quarter of 2003 was primarily due to the consolidation of Spansion LLC's results of operations, which include sales by Spansion LLC to Fujitsu, which are denominated in yen. Our foreign exchange risk exposure resulting from these sales is partially mitigated as a result of our yen-denominated manufacturing costs. In addition, we are subject to foreign currency risk related to our manufacturing costs in Fab 30, which are denominated in euros. We use foreign currency forward and option contracts to reduce our exposure to the euro, but future exchange rate fluctuations may cause increases or decreases to our Fab 30 manufacturing costs. The impact on our operating results from changes in foreign currency rates individually and in the aggregate has not been material, principally as a result of our foreign currency hedging activities.

**FINANCIAL CONDITION**

Our cash, cash equivalents and short-term investments at June 27, 2004 totaled \$1.1 billion, which included approximately \$370 million in cash, cash equivalents, and short-term investments held by Spansion LLC. Spansion LLC's operating agreement governs its ability to use this cash balance for operations or to distribute it to us and Fujitsu. Pursuant to the operating agreement, and subject to restrictions contained in third-party loan agreements, Spansion LLC must first distribute any cash balance to us and Fujitsu in an amount sufficient to cover each party's estimated tax liability, if any, related to Spansion LLC's taxable income for each fiscal year. Any remaining cash balance after the tax liability distribution would be used by Spansion LLC to fund its operations in accordance with its budget. If any cash remains, it must be used to repay Spansion LLC's outstanding debt to us and Fujitsu. Any remaining cash after these distributions is distributed at the discretion of Spansion LLC's board of managers to us and Fujitsu, pro rata, based on each party's membership interest at the time of distribution, which currently is 60 percent and 40 percent. In addition, we had a compensating balance of \$213 million as of June 27, 2004, which represents the minimum cash balance that AMD Saxony must maintain pursuant to the terms of the Dresden Loan Agreements.

Net cash provided by operating activities in the first six months of 2004 was approximately \$461 million. Our net income for the period was adjusted for non-cash charges, which were primarily depreciation and amortization. The net changes in payables and accrued liabilities in the first six months of 2004 included refunds of \$20.5 million of customer deposits under long-term purchase agreements and \$27 million in royalty payments under a cross-license agreement. In addition, inventories increased in the first six months of 2004 by approximately \$29 million in anticipation of increased seasonal demand during the second half of 2004. Substantially all of the increase in inventories was related to AMD64-based processor products.

Net cash used by operating activities in the first six months of 2003 was approximately \$91 million. This was primarily caused by our net loss for the period adjusted for non-cash charges, primarily depreciation and amortization. The net changes in payables and accrued liabilities in the first six months of 2003 included refunds of \$26.5 million of customer deposits under long-term purchase agreements, a payment of \$90 million for a technology license from IBM and approximately \$33 million of payments under the 2002 Restructuring Plan.

Net cash used by investing activities was \$660 million in the first six months of 2004. Cash was used primarily to purchase short-term investments and property, plant and equipment, including the continuing construction of our 300-millimeter wafer fabrication facility in Dresden, Germany.

Net cash provided by investing activities was \$286 million during the first six months of 2003, primarily as a result of \$574 million of net cash inflow from purchases and sales of

## [Table of Contents](#)

available-for-sale securities, offset by \$284 million used for the purchases of property, plant and equipment.

Net cash used by financing activities was \$66 million in the first six months of 2004, primarily for payments on debt and capital lease obligations, offset by proceeds from amounts borrowed by our subsidiaries under short-term loans, an equipment sale- leaseback transaction, sale of stock under our Employee Stock Purchase Plan and employee stock option exercises.

Net cash provided by financing activities was \$83 million during the first six months of 2003 primarily due to proceeds of \$82 million of capital investment grants received from the German government as part of the Dresden Fab 30 loan agreements, \$14 million in proceeds from amounts borrowed under the July 2003 Loan Agreement and from an equipment sale-leaseback transaction, a \$26 million decrease in the compensating cash balance and \$10 million of proceeds primarily from sale of stock under our Employee Stock Purchase Plan, offset by \$49 million in payments on debt and capital lease obligations. The compensating cash balance represents the minimum cash balance that AMD Saxony must maintain in order to comply with the minimum liquidity covenant set forth in the Dresden Loan Agreements.

### **Notes Payable to Banks**

The July 2003 Loan Agreement provides for a secured revolving line of credit of up to \$125 million that expires in July 2007. We can borrow, subject to amounts set aside by the lenders, up to 85 percent of our eligible accounts receivable from OEMs and 50 percent of our eligible accounts receivable from distributors. As of June 27, 2004, no borrowings were outstanding under the July 2003 Loan Agreement.

On April 19, 2004, we amended our July 2003 Loan Agreement. The primary purpose of the April amendment was to eliminate any conflict between our obligations under the July 2003 Loan Agreement and our obligations under the Fab 36 Loan Agreements and partnership agreements.

Pursuant to the terms of the July 2003 Loan Agreement, as amended, we have to comply with, among other things, the following financial covenants if our net domestic cash (as defined in the July 2003 Loan Agreement) declines below \$125 million:

- comply with restrictions on our ability to pay cash dividends on our common stock;
- maintain an adjusted tangible net worth (as defined in the July 2003 Loan Agreement) as follows:

| <u>Measurement Date</u>                    | <u>Amount</u>   |
|--|-----------------|
| Last day of each fiscal quarter in 2004    | \$1.425 billion |
| Last day of each fiscal quarter in 2005    | \$ 1.85 billion |
| Last day of each fiscal quarter thereafter | \$ 2.0 billion  |

## Table of Contents

- achieve EBITDA (earnings before interest, taxes, depreciation and amortization) according to the following schedule:

| <u>Period</u>  | <u>Amount</u>    |
|--|------------------|
| Four fiscal quarters ending June 30, 2004  | \$ 750 million   |
| Four fiscal quarters ending September 30, 2004                                   | \$ 850 million   |
| Four fiscal quarters ending December 31, 2004                                    | \$ 950 million   |
| Four fiscal quarters ending March 31, 2005 and on each fiscal quarter thereafter | \$ 1,050 million |

As of June 27, 2004, net domestic cash, as defined, totaled \$310 million and the preceding financial covenants were not applicable. Our obligations under the July 2003 Loan Agreement are secured by all of our accounts receivable, inventory, general intangibles (excluding intellectual property) and the related proceeds, excluding Spansion LLC's accounts receivable, inventory, and general intangibles.

### **Spansion Japan Revolving Loan Agreement**

In March 2004, Spansion Japan Limited, a wholly owned subsidiary of Spansion LLC, entered into a revolving facility credit agreement with certain Japanese financial institutions in the aggregate amount of 15 billion yen (approximately \$139 million as of June 27, 2004). The revolving facility consists of two tranches: tranche A in the aggregate amount of up to nine billion yen (approximately \$84 million as of June 27, 2004) and tranche B in the aggregate amount of up to six billion yen (approximately \$55 million as of June 27, 2004). Spansion Japan can draw under the facility until March 24, 2005. However, as described in more detail below, the total amount that Spansion Japan can draw is limited based on the value of Spansion Japan's accounts receivable from Fujitsu, which are pledged as security to the lenders.

Amounts borrowed under tranche A bear interest at a rate of TIBOR plus 0.55 percent. Amounts borrowed under tranche B bear interest at a rate of TIBOR plus 1.2 percent. Spansion Japan must first fully draw under tranche A prior to drawing amounts under tranche B. Borrowings must be used for working capital purposes and must be repaid no later than April 24, 2005. As of June 27, 2004, there were no borrowings outstanding under this facility.

Pursuant to the terms of the revolving facility agreement, Spansion Japan is required to comply with the following financial covenants:

- ensure that assets exceed liabilities as of the end of each fiscal year and each six-month (mid-year) period;
- maintain an adjusted tangible net worth (as defined in the agreement) at an amount not less than 60 billion yen (approximately \$557 million as of June 27, 2004) as of the last day of each fiscal quarter;

## Table of Contents

- maintain total net income plus depreciation, as of the last day of each fiscal period, as follows:

| <u>Period</u>                 | <u>Amount</u> |
|-------------------------------|---------------|
| Second fiscal quarter of 2004 | \$ 68 million |
| Fiscal year 2004              | \$213 million |

- ensure that as of the last day of any fiscal quarter, the ratio of (a) net income plus depreciation to (b) the sum of interest expenses plus the amount of scheduled debt repayments plus capital expenditures for its facilities located in Aizu-Wakamatsu, Japan, for such period, is not less than the following percentages:

| <u>Period</u>                          | <u>Percentage</u> |
|--|-------------------|
| Second fiscal quarter of 2004          | 110%              |
| Third – fourth fiscal quarters of 2004 | 120%              |

As of June 27, 2004, Spansion Japan was in compliance with these financial covenants.

As security for amounts outstanding under the revolving facility, Spansion Japan pledged its accounts receivable from Fujitsu. The accounts receivable are held in trust pursuant to the terms of a trust agreement. Under the trust agreement, Spansion Japan is required to maintain the value of its accounts receivable at specified thresholds (as defined by the trust agreement), based upon the amounts outstanding under tranche A and tranche B. In addition, the trustee collects payments from Fujitsu into a separate trust account and releases these amounts to Spansion Japan, subject to the calculated thresholds, upon instruction from the agent for the lenders. At any time when the accounts receivable balance in the trust account is less than the required thresholds, Spansion Japan is required to do one of the following to cure the shortfall:

- provide additional cash to the trust; or
- repay a specified portion of the outstanding loans.

Amounts outstanding under the revolving credit facility may become automatically due and payable upon the occurrence of specified events with respect to Spansion Japan, including: filings or proceedings in bankruptcy, failure to pay any obligations under the revolving credit facility that have become due, failure to pay other third-party indebtedness where such debt exceeds 200 million yen (approximately \$2 million as of June 27, 2004), or if the value of the accounts receivable from Fujitsu held in trust is below the required thresholds and such shortfall is not remedied within three business days. In addition, amounts outstanding under the revolving credit facility may become automatically due and payable upon the occurrence of specified events with respect to Fujitsu including: filings or proceedings in bankruptcy, default by Fujitsu with respect to payments to Spansion Japan or other obligations under their purchase and sale agreement, default by Fujitsu with respect to other third-party indebtedness where such debt exceeds one billion yen (approximately \$9 million as of June 27, 2004). As of June 27, 2004, the amount of accounts receivable held in the trust was approximately \$235 million.

## [Table of Contents](#)

Because most amounts under the Spansion Japan Revolving Loan are denominated in yen, the dollar amounts stated above are subject to change based on applicable exchange rates. We used the exchange rate as of June 27, 2004 of 107.71 yen to one U.S. dollar to translate the amounts denominated in yen into U.S. dollars.

### Contractual Cash Obligations and Guarantees

The following table summarizes our total principal contractual cash obligations at June 27, 2004, and are supplemented by the discussion following the table. Amounts set forth for operating leases and unconditional purchase commitments are not recorded on our consolidated balance sheets.

|   | Payments Due By Period |                   |                   |                   |                   |                  |                           |
|---|------------------------|-------------------|-------------------|-------------------|-------------------|------------------|---------------------------|
|   | Total                  | 2004              | 2005              | 2006              | 2007              | 2008             | 2009 and beyond           |
|   | (Thousands)            |                   |                   |                   |                   |                  |                           |
| 4.75% Convertible Senior Debentures Due 2022        | \$ 500,000             | \$ —              | \$ —              | \$ —              | \$ —              | \$ —             | \$ 500,000                |
| 4.50% Convertible Senior Notes Due 2007             | 402,500                | —                 | —                 | —                 | 402,500           | —                | —                         |
| Dresden Term Loan                                   | 612,360                | —                 | 328,050           | 284,310           | —                 | —                | —                         |
| July 2003 Spansion Term Loan                        | 58,348                 | 13,750            | 27,500            | 17,098            | —                 | —                | —                         |
| Spansion Japan Term Loan                            | 144,833                | 22,282            | 44,564            | 44,564            | 33,423            | —                | —                         |
| Fujitsu Cash Note                                   | 40,000                 | —                 | 10,000            | 30,000            | —                 | —                | —                         |
| AMD Penang Term Loan                                | 7,084                  | 886               | 1,519             | 1,519             | 1,519             | 1,519            | 122                       |
| Spansion China Loan                                 | 4,369                  | 2,184             | 2,185             | —                 | —                 | —                | —                         |
| Capital lease obligations                           | 225,197                | 48,238            | 94,157            | 79,136            | 3,548             | 118              | —                         |
| Other long-term liabilities                         | —                      | —                 | —                 | —                 | —                 | —                | —                         |
| Operating leases                                    | 395,830                | 34,561            | 58,393            | 46,378            | 39,291            | 37,560           | 179,647                   |
| Unconditional purchase commitments                  | 994,334                | 287,117           | 142,859           | 73,179            | 64,363            | 45,664           | 381,152 <sup>(1)(2)</sup> |
| <b>Total principal contractual cash obligations</b> | <b>\$ 3,384,855</b>    | <b>\$ 409,018</b> | <b>\$ 709,227</b> | <b>\$ 576,184</b> | <b>\$ 544,644</b> | <b>\$ 84,861</b> | <b>\$ 1,060,921</b>       |

- (1) Purchase orders for goods and services that are cancelable upon notice and without significant penalties are not included in the amounts above.
- (2) We have unconditional purchase commitments for goods and services where payments are based, in part, on volume or type of services we require. In those cases, we only included the minimum volume or purchase commitment in the table above.

### 4.75% Convertible Senior Debentures Due 2022

On January 29, 2002, we issued \$500 million of our 4.75% Convertible Senior Debentures Due 2022 (the 4.75% Debentures) in a private offering pursuant to Rule 144A and Regulation S of the Securities Act.

## [Table of Contents](#)

The interest rate payable on the 4.75% Debentures will reset on August 1, 2008, August 1, 2011 and August 1, 2016 to a rate equal to the interest rate payable 120 days prior to the reset dates on 5-year U.S. Treasury Notes, plus 43 basis points. The interest rate will not be less than 4.75 percent and will not exceed 6.75 percent. Holders have the right to require us to repurchase all or a portion of our 4.75% Debentures on February 1, 2009, February 1, 2012, and February 1, 2017. The holders of the 4.75% Debentures also have the ability to require us to repurchase the 4.75% Debentures in the event that we undergo specified fundamental changes, including a change of control. In each such case, the redemption or repurchase price would be 100 percent of the principal amount of the 4.75% Debentures plus accrued and unpaid interest. The 4.75% Debentures are convertible by the holders into our common stock at a conversion price of \$23.38 per share at any time. At this conversion price, each \$1,000 principal amount of the 4.75% Debentures will be convertible into approximately 43 shares of our common stock. Issuance costs incurred in the amount of approximately \$14 million are amortized ratably, which approximates the effective interest method, over the term of the 4.75% Debentures, as interest expense.

Beginning on February 5, 2005, the 4.75% Debentures are redeemable by us for cash at specified prices expressed as a percentage of the outstanding principal amount plus accrued and unpaid interest at our option, provided that we may not redeem the 4.75% Debentures prior to February 5, 2006, unless the last reported sale price of our common stock is at least 130 percent of the then effective conversion price for at least 20 trading days within a period of 30 consecutive trading days ending within five trading days of the date of the redemption notice.

The redemption prices for the specified periods are as follows:

| <u>Period</u>  | <u>Price as a percentage of principal amount</u> |
|--|--|
| Beginning on February 5, 2005 through February 4, 2006 | 102.375%   |
| Beginning on February 5, 2006 through February 4, 2007 | 101.583%   |
| Beginning on February 5, 2007 through February 4, 2008 | 100.792%   |
| Beginning on February 5, 2008                          | 100.000%   |

We may elect to purchase or otherwise retire our 4.75% Debentures with cash, stock or other assets from time to time in open market or privately negotiated transactions, either directly or through intermediaries when we believe that market conditions are favorable to do so. Such purchases may have a material effect on our liquidity, financial condition and results of operations.

### **4.50% Convertible Senior Notes Due 2007**

On November 25, 2002, we sold \$402.5 million of 4.50% Convertible Senior Notes Due 2007 (the 4.50% Notes) in a registered offering. Interest on the 4.50% Notes is payable semiannually in arrears on June 1 and December 1 of each year, beginning June 1, 2003. Beginning on December 4, 2005, the 4.50% Notes are redeemable by us at our option for cash at specified prices expressed as a percentage of the outstanding principal amount plus



---

## [Table of Contents](#)

accrued and unpaid interest provided that we may not redeem the 4.50% Notes unless the last reported sale price of our common stock is at least 150 percent of the then effective conversion price for at least 20 trading days within a period of 30 trading days ending within five trading days of the date of the redemption notice.

The redemption prices for the specified periods are as follows:

| <u>Period</u>   | <u>Price as a percentage of principal amount</u> |
|---|--|
| Beginning on December 4, 2005 through November 30, 2006 | 101.8%   |
| Beginning on December 1, 2006 through November 30, 2007 | 100.9%   |
| On December 1, 2007                                     | 100.0%   |

The 4.50% Notes are convertible at the option of the holder at any time prior to the close of business on the business day immediately preceding the maturity date of December 1, 2007, unless previously redeemed or repurchased, into shares of common stock at a conversion price of \$7.37 per share, subject to adjustment in certain circumstances. At this conversion price, each \$1,000 principal amount of the 4.50% Notes will be convertible into approximately 135 shares of our common stock. Issuance costs incurred in the amount of approximately \$12 million are amortized ratably, over the term of the 4.50% Notes, as interest expense, approximating the effective interest method.

Holders have the right to require us to repurchase all or a portion of our 4.50% Notes in the event that we undergo specified fundamental changes, including a change of control. In each such case, the redemption or repurchase price would be 100 percent of the principal amount of the 4.50% Notes plus accrued and unpaid interest.

We may elect to purchase or otherwise retire our 4.50% Notes with cash, stock or other assets from time to time in open market or privately negotiated transactions, either directly or through intermediaries when we believe that market conditions are favorable to do so. Such purchases may have a material effect on our liquidity, financial condition and results of operations.

### **Dresden Term Loan and Dresden Intercompany Guarantee**

AMD Saxony, our indirect, wholly-owned German subsidiary, continues to facilitate Fab 30, which began production in the second quarter of 2000. AMD, the Federal Republic of Germany, the State of Saxony and a consortium of banks are providing financing for the project. We currently estimate that the construction and facilitization costs of Fab 30 will be \$2.5 billion when it is fully equipped by the end of 2005. As of June 27, 2004, we had invested approximately \$2.3 billion in AMD Saxony and we currently estimate that during the remainder of 2004 we will invest approximately \$140 million.

In March 1997, AMD Saxony entered into a loan agreement and other related agreements (the Dresden Loan Agreements) with a consortium of banks led by Dresdner Bank AG, a German financial institution, in order to finance the project. AMD Saxony has pledged

---

## [Table of Contents](#)

substantially all of its property as security under the Dresden Loan Agreements. The Dresden Loan Agreements were amended in February 2004 primarily to accommodate the construction, facilitization, and operation of Fab 36.

Because most of the amounts under the Dresden Loan Agreements are denominated in deutsche marks (converted to euros), the dollar amounts are subject to change based on applicable exchange rates. We used the exchange rate that was permanently fixed on January 1, 1999, of 1.95583 deutsche marks to one euro, for the conversion of deutsche marks to euros, and then used the exchange rate at June 27, 2004, of 0.823 euro to one U.S. dollar, to translate the amounts denominated in deutsche marks into U.S. dollars. However, with respect to amounts for investment grants and allowances and interest subsidies received by AMD Saxony through June 27, 2004, we used historical exchange rates that were in effect at the time AMD Saxony received these grants, allowances and subsidies to convert amounts denominated in deutsche marks (converted to euros) into U.S. dollars.

The Dresden Loan Agreements, as amended, provide for the funding of the construction and facilitization of Fab 30. The funding consists of:

- equity contributions, subordinated and revolving loans and loan guarantees from, and full cost reimbursement through, AMD;
- loans from a consortium of banks; and
- investment grants, investment allowances, interest subsidies, and loan guarantees from the Federal Republic of Germany and the State of Saxony.

The Dresden Loan Agreements require that we partially fund Fab 30 project costs in the form of subordinated and revolving loans to, or equity investments in, AMD Saxony. In accordance with the terms of the Dresden Loan Agreements, as of June 27, 2004, we had provided \$176 million of subordinated loans and \$286 million of equity investments in AMD Saxony. These amounts have been eliminated in our unaudited condensed consolidated financial statements.

In addition to support from us, the consortium of banks referred to above made available \$932 million in loans to AMD Saxony to help fund Fab 30 project costs. The loans have been fully drawn and a portion has been repaid. AMD Saxony had \$612 million of such loans outstanding as of June 27, 2004, which are included in our unaudited condensed consolidated balance sheet.

Finally, pursuant to a Subsidy Agreement, the Federal Republic of Germany and the State of Saxony are supporting the Fab 30 project, in accordance with the Dresden Loan Agreements, in the form of:

- guarantees equal to 65 percent of AMD Saxony bank debt, which was approximately \$398 million as of June 27, 2004;
- capital investment grants and allowances totaling up to approximately \$442 million; and
- interest subsidies totaling \$186 million.

---

## [Table of Contents](#)

Of these amounts, AMD Saxony received approximately \$412 million in capital investment grants and allowances and \$147 million in interest subsidies. In addition, AMD Saxony has received advance payments for interest subsidies amounting to \$5 million as of June 27, 2004. AMD Saxony also received \$56 million in research and development subsidies through June 27, 2004. Amounts received under the Subsidy Agreement are recorded as a long-term liability on our financial statements and are being amortized to operations ratably over the contractual life of the Subsidy Agreement as a reduction to operating expenses. As of June 27, 2004, these amounts were amortized through December 2007. As of June 27, 2004, AMD Saxony has received substantially all investment grants and allowances and interest subsidies to which it is entitled.

Under the original Subsidy Agreement for the construction and financing of Fab 30, AMD Saxony undertook to attain a certain employee headcount by December 2003 and to maintain such headcount until December 2008. Noncompliance with the conditions of the grants, allowances and subsidies contained in the Subsidy Agreement could result in the forfeiture of all or a portion of the future amounts to be received, as well as the repayment of all or a portion of amounts received to date. In December 2002, AMD Saxony reduced its anticipated employment levels as a result of the 2002 Restructuring Plan. Consequently, as of December 2003, headcount was below the level agreed to by AMD Saxony at which AMD Saxony would be entitled to receive the maximum amount of capital investment grants and allowances available. However, the aggregate amount of grants and allowances actually received by AMD Saxony to date, calculated as a percentage of the maximum amount of grants and allowances available, does not exceed the actual headcount at AMD Saxony at December 2003, calculated as a percentage of the headcount target undertaken in the Subsidy Agreement. Accordingly, AMD Saxony does not believe it has received grants and allowances in excess of its entitlement under the Subsidy Agreement. However, we anticipate that the maximum amount of capital investment grants and allowances available under the Subsidy Agreement will be reduced from an originally anticipated amount of \$506 million to approximately \$442 million. We adjusted the quarterly amortization of these amounts accordingly.

In April 2004, the German governmental authorities advised AMD Saxony that rather than maintaining employee headcount attained by December 2003 through December 2008, it would be required to maintain employee headcount attained as of December 2002 through December 2007. Beginning in April 2004, we adjusted the quarterly amortization of the grants and allowances until December 2007. In addition, based on employee headcount attained as of December 2002, AMD Saxony does not believe that it has received grants and allowances in excess of its entitlement under the Subsidy Agreements.

The Dresden Loan Agreements, as amended, also require that we:

- provide interim funding to AMD Saxony if either the remaining capital investment grants and allowances or the remaining interest subsidies are delayed, such funding to be repaid to AMD, as AMD Saxony receives the investment grants and allowances or subsidies from the State of Saxony and the Federal Republic of Germany;

---

## Table of Contents

- fund shortfalls in government subsidies resulting from any default under the Subsidy Agreement caused by AMD Saxony or its affiliates; and
- guarantee up to 50 percent of AMD Saxony's obligations under the Dresden Loan Agreements, which guarantee must not be less than \$135 million or more than \$365 million, until the bank loans are repaid in full. As of June 27, 2004, the amount outstanding under the guarantee was \$306 million.

AMD Saxony would be in default under the Dresden Loan Agreements if we, AMD Saxony or AMD Saxony Holding GmbH (AMD Holding) fail to comply with certain obligations thereunder or upon the occurrence of certain events and if, after the occurrence of the event, the lenders determine that their legal or risk position is materially adversely affected. Circumstances that could result in a default include:

- our failure to fund equity contributions or loans or otherwise comply with our obligations relating to the Dresden Loan Agreements;
- the sale of shares in AMD Saxony or AMD Holding;
- the failure to pay material obligations;
- the occurrence of a material adverse change or filings or proceedings in bankruptcy or insolvency with respect to us, AMD Saxony or AMD Holding;
- the occurrence of a default under the July 2003 Loan Agreement; and
- AMD Saxony's noncompliance with certain financial covenants, including minimum tangible net worth, minimum interest cover ratio, asset cover ratio and a minimum liquidity covenant.

Generally, any default with respect to borrowings made or guaranteed by AMD that results in recourse to us of more than \$2.5 million, and that is not cured by us, would result in a cross-default under the Dresden Loan Agreements. As of June 27, 2004, we were in compliance with all conditions of the Dresden Loan Agreements.

In the event we are unable to meet our obligations to AMD Saxony as required under the Dresden Loan Agreements and the lenders determine that their legal or risk position is materially adversely affected, we will be in default under the Dresden Loan Agreements, which would permit acceleration of the outstanding loans of approximately \$612 million. The occurrence of a default under these agreements would likely result in a cross default under the Indentures governing our 4.75% Debentures and 4.50% Notes. We cannot assure that we would be able to obtain the funds necessary to fulfill these obligations. Any such failure would have a material adverse effect on us.

### **July 2003 Spansion Term Loan and Guarantee**

Under our July 2003 Spansion Term Loan, as amended, amounts borrowed bear interest at a variable rate of LIBOR plus four percent, which was 5.11 percent at June 27, 2004. Repayment occurs in equal, consecutive, quarterly principal and interest installments ending in September 2006. As of June 27, 2004, \$58 million was outstanding under the July 2003 Spansion Term Loan, of which 60 percent is guaranteed by us and 40 percent is guaranteed by Fujitsu. Spansion LLC granted a security interest in certain property, plant and equipment

## [Table of Contents](#)

as security under the July 2003 Spansion Term Loan. In addition, as security for our guarantee obligations, we granted a security interest in certain of our assets, including our accounts receivable, inventory, general intangibles (excluding intellectual property) and the related proceeds.

Effective March 29, 2004, we amended the July 2003 Spansion Term Loan. Pursuant to the amendment, Spansion LLC enters into an enhanced covenant period if either its net domestic cash balance (as defined in the March 2004 amendment) as of the last day of any fiscal quarter is below \$60 million or if its net worldwide cash balance (as defined in the March 2004 amendment) as of the last day of any fiscal quarter is below \$130 million.

During an enhanced covenant period, Spansion LLC is, among other things, restricted in its ability to pay cash dividends in respect of membership interests. In addition, during an enhanced covenant period, Spansion LLC is also required to comply with the following financial covenants:

- maintain an adjusted tangible net worth (as defined in the July 2003 Spansion Term Loan) of not less than \$850 million;
- achieve EBITDA according to the following schedule:

| <u>Period</u>                               | <u>Amount</u> |
|---|---------------|
| For the four quarters ending June 2004      | \$285 million |
| For the four quarters ending September 2004 | \$475 million |
| For the four quarters ending December 2004  | \$550 million |
| For the four quarters ending in 2005        | \$640 million |
| For the four quarters ending in 2006        | \$800 million |

- maintain a fixed charge coverage ratio (as defined in the July 2003 Spansion Term Loan) according to the following schedule:

| <u>Period</u>                | <u>Ratio</u> |
|------------------------------|--------------|
| Period ending June 2004      | 0.4 to 1.00  |
| Period ending September 2004 | 0.8 to 1.00  |
| Period ending December 2004  | 1.0 to 1.00  |
| Full Fiscal Year 2005        | 1.0 to 1.00  |
| Full Fiscal Year 2006        | 0.9 to 1.00  |

As of June 27, 2004, Spansion LLC's net domestic cash totaled \$206 million and its net worldwide cash totaled \$370 million. Because Spansion LLC was not in an enhanced covenant period, the preceding financial covenants were not applicable.

## [Table of Contents](#)

### Spansion Japan Term Loan and Guarantee

Because most amounts under the Spansion Japan Term Loan are denominated in yen, the dollar amounts are subject to change based on applicable exchange rates. We used the exchange rate as of June 27, 2004 of 107.71 yen to one U.S. dollar to translate the amounts denominated in yen into U.S. dollars.

As a result of the Spansion LLC transaction, the third-party loans of the Manufacturing Joint Venture were refinanced from the proceeds of a term loan entered into between Spansion Japan, which owns the assets of the Manufacturing Joint Venture, and a Japanese financial institution. Under the agreement, the amounts borrowed bear an interest rate of TIBOR plus a spread that is determined by Fujitsu's current debt rating and Spansion Japan's non-consolidated net asset value as of the last day of its fiscal year. The interest rate was 0.99 percent as of June 27, 2004. Repayment occurs in equal, consecutive, quarterly principal installments ending in June 2007. As of June 27, 2004, \$145 million was outstanding under this term loan agreement. Spansion Japan's assets are pledged as security for its borrowings under this agreement. Also, Fujitsu has guaranteed 100 percent of the amounts outstanding under this facility. We agreed to reimburse Fujitsu 60 percent of any amount paid by Fujitsu under its guarantee of this loan. Under this loan agreement, Spansion Japan is required to comply with the following financial covenants:

- ensure that assets exceed liabilities as of the end of each fiscal year and each six-month period during such fiscal year;
- maintain an adjusted tangible net worth (as defined in the loan agreement), as of the last day of each fiscal quarter, of not less than 60 billion yen;
- maintain total net income plus depreciation, as of the last day of each fiscal period, as follows:

| <u>Period</u>                 | <u>Amount</u> |
|-------------------------------|---------------|
| Second fiscal quarter of 2004 | \$ 68 million |
| Fiscal year 2004              | \$213 million |
| Fiscal year 2005              | \$196 million |
| Fiscal year 2006              | \$181 million |

- ensure that as of the last day of any fiscal quarter, the ratio of (a) net income plus depreciation to (b) the sum of (i) interest expense for such period plus (ii) scheduled amortization of debt for borrowed money (as defined in the loan agreement) for such period, including lease rentals plus (iii) maintenance capital expenditures for Spansion Japan's existing and after acquired real property and improvements at its manufacturing facilities located in Aizu-Wakamatsu, Japan, is not less than:

| <u>Period</u>                            | <u>Percentage</u> |
|--|-------------------|
| Second fiscal quarter of 2004            | 110%              |
| Third and fourth fiscal quarters of 2004 | 120%              |
| Fiscal year 2005                         | 120%              |
| Fiscal year 2006                         | 120%              |

---

## [Table of Contents](#)

As of June 27, 2004, Spansion Japan was in compliance with these financial covenants.

### **Fujitsu Cash Note**

As a result of the Spansion LLC transaction, Fujitsu loaned \$40 million to Spansion LLC pursuant to a promissory note. The note bears an interest rate of LIBOR plus four percent, which was 5.11 percent as of June 27, 2004, and has a term of three years. The note is repayable in four equal payments, including interest, on September 30, 2005, December 31, 2005, March 31, 2006 and June 30, 2006.

### **AMD Penang Term Loan**

On January 29, 2004, our subsidiary in Malaysia, AMD Export Sdn. Bhd., or AMD Penang, entered into a term loan agreement with a local financial institution. Under the terms of the loan agreement, AMD Penang can borrow up to 30 million Malaysian Ringgit (approximately \$8 million as of July 27, 2004) in order to fund the purchase of equipment. The loan bears a fixed annual interest rate of 5.9 percent and is payable in equal, consecutive, monthly principal and interest installments through February 2009. The total amount outstanding as of June 27, 2004 was approximately \$7 million.

### **Spansion China Loan**

During the second quarter of 2004, one of Spansion LLC's subsidiaries in the People's Republic of China, Spansion (China) Limited, entered into two revolving loan agreements with a local financial institution. Under the terms of the revolving foreign exchange loan agreement, Spansion China can borrow in U.S. dollars up to an amount of \$18 million. Under the terms of the revolving Renminbi (RMB) loan agreement, Spansion China can borrow up to RMB 120 million (approximately \$14.5 million as of June 27, 2004). The interest rate on the US dollar denominated loans is LIBOR plus one percent and the interest rate on the RMB denominated loans is fixed at 4.779 percent. The maximum term of each loan is 12 months from the date of each drawdown. As of June 27, 2004, the total amount outstanding under the US dollar denominated loan was approximately \$1.7 million and the amount outstanding under the RMB denominated portion was approximately \$2.7 million.

### **Capital Lease Obligations**

As of June 27, 2004, we had aggregate outstanding capital lease obligations of approximately \$225 million. Obligations under these lease agreements are collateralized by the assets leased and are payable through 2008. Leased assets consist principally of machinery and equipment. We guaranteed approximately \$116 million of Spansion LLC's aggregate outstanding capital lease obligations as of June 27, 2004.

---

[Table of Contents](#)

**Other Long-term Liabilities**

The only component of Other Long-term Liabilities that requires us to make cash payments is a net restructuring accrual of approximately \$93 million relating to the net future operating lease payments on certain facilities that were included in our 2002 Restructuring Plan. We will make these payments through 2011. We included these amounts in the operating lease total in the table above. The other components of Other Long-term Liabilities primarily consist of approximately \$203 million of deferred grants and subsidies related to the Fab 30 project and a \$23 million deferred gain as a result of the sale and leaseback of our corporate marketing, general and administrative facility in Sunnyvale, California in 1998. These components do not require us to make cash payments.

**Operating Leases and Unconditional Purchase Commitments**

We lease certain of our facilities, including our executive offices in Sunnyvale, California, under lease agreements that expire at various dates through 2018. We lease certain of our manufacturing and office equipment for terms ranging from one to five years. Total future lease obligations as of June 27, 2004, were approximately \$396 million, of which \$121 million was recorded as a liability for certain facilities that were included in our 2002 Restructuring Plan.

We enter into purchase commitments for manufacturing supplies and services. Total non-cancelable purchase commitments as of June 27, 2004, were approximately \$994 million for periods through 2020. These purchase commitments included approximately \$257 million of payments to M+W Zander for the design and construction of Fab 36. These payments will be made to M+W Zander as services are performed. Our non-cancelable purchase commitments also included \$60 million representing future payments to IBM under our joint development agreement. As IBM's services are being performed ratably over the life of the agreement, we expense the payments as incurred. Purchase commitments also included approximately \$64 million for software maintenance agreements that require periodic payments through 2007. As a result, we have not recorded any liabilities relating to these agreements. The remaining \$613 million primarily consists of non-cancelable contractual obligations to purchase raw materials, natural resources and office supplies, including approximately \$472 million related to contractual obligations to purchase energy and gas for Fab 36 through 2020. Purchase orders for goods and services that are cancelable without significant penalties are not included in the amounts above.

*Guarantees of Indebtedness Recorded on Our Unaudited Condensed Consolidated Balance Sheet*

The following table summarizes the principal guarantees issued as of June 27, 2004 related to underlying liabilities that are already recorded on our unaudited condensed consolidated balance sheet as of June 27, 2004 and their expected expiration dates by year. As a result, no incremental liabilities are recorded on our unaudited consolidated balance sheet for these guarantees. Please refer to our earlier discussion under the principal contractual cash obligations table for more information.



[Table of Contents](#)

| (Thousands)                            | Amounts Guaranteed * | Amounts of guarantee expiration per period |                   |                   |                  |             | 2009 and Beyond |
|--|----------------------|--|-------------------|-------------------|------------------|-------------|-----------------|
|  |                      | 2004                                       | 2005              | 2006              | 2007             | 2008        |                 |
|  |                      |  |                   | (Thousands)       |                  |             |                 |
| Dresden intercompany guarantee         | \$ 306,180           | \$ —                                       | \$ 164,025        | \$ 142,155        | \$ —             | \$ —        | \$ —            |
| July 2003 Spansion term loan guarantee | 35,009               | 8,250                                      | 16,500            | 10,259            | —                | —           | —               |
| Spansion Japan term loan guarantee     | 86,899               | 13,369                                     | 26,738            | 26,738            | 20,054           | —           | —               |
| Spansion capital lease guarantees      | 116,037              | 24,679                                     | 51,010            | 37,077            | 3,271            | —           | —               |
| <b>Total guarantees</b>                | <b>\$ 544,125</b>    | <b>\$ 46,298</b>                           | <b>\$ 258,273</b> | <b>\$ 216,229</b> | <b>\$ 23,325</b> | <b>\$ —</b> | <b>\$ —</b>     |

\* Amounts represent the principal amount of the underlying obligations guaranteed and are exclusive of obligations for interest, fees and expenses.

*Guarantees of Indebtedness not Recorded on Our Unaudited Condensed Consolidated Balance Sheet*

The following table summarizes the principal guarantees issued as of June 27, 2004 for which the related underlying liabilities are not recorded on our unaudited condensed consolidated balance sheets as of June 27, 2004 and their expected expiration dates. We have not recorded any liability in our consolidated financial statements associated with the above guarantees because they were issued prior to December 31, 2002, the effective date of FIN 45.

|   | Amounts Guaranteed * | Amounts of guarantee expiration per period |                  |                 |                  |             | 2009 and Beyond   |
|---|----------------------|--|------------------|-----------------|------------------|-------------|-------------------|
|   |                      | 2004                                       | 2005             | 2006            | 2007             | 2008        |                   |
|   |                      |  |                  | (Thousands)     |                  |             |                   |
| Spansion LLC operating lease guarantees | \$ 20,661            | \$ 5,534                                   | \$ 9,122         | \$ 6,005        | \$ —             | \$ —        | \$ —              |
| AMTC revolving loan guarantee           | 38,880               | —  | —                | —               | 38,880           | —           | —                 |
| AMTC rental guarantee                   | 139,928              | —  | —                | —               | —                | —           | 139,928**         |
| Other                                   | 3,173                | 907  | 1,813            | 453             | —                | —           | —                 |
| <b>Total guarantees</b>                 | <b>\$ 202,642</b>    | <b>\$ 6,441</b>                            | <b>\$ 10,935</b> | <b>\$ 6,458</b> | <b>\$ 38,880</b> | <b>\$ —</b> | <b>\$ 139,928</b> |

\* Represent the principal amount of the underlying obligations guaranteed and are exclusive of obligations for interest, fees and expenses.

\*\* Amount of the guarantee diminishes as the rent is paid.

**Spansion LLC Operating Lease Guarantees**

We guaranteed certain operating leases entered into by Spansion LLC and its subsidiaries totaling approximately \$21 million as of June 27, 2004. The amounts guaranteed are reduced by the actual amount of lease payments paid by Spansion LLC over the lease terms.

---

## [Table of Contents](#)

### **AMTC and BAC Guarantees**

The Advanced Mask Technology Center GmbH & Co. KG (AMTC) and Maskhouse Building Administration GmbH & Co., KG (BAC) are joint ventures formed by us, Infineon Technologies AG and DuPont Photomasks, Inc. for the purpose of constructing and operating a new advanced photomask facility in Dresden, Germany. To finance the project, BAC and AMTC entered into a \$146 million revolving credit facility and a \$91 million term loan in December 2002. Also in December 2002, in order to occupy the photomask facility, AMTC entered into a rental agreement with BAC. With regard to these commitments by BAC and AMTC, as of June 27, 2004, we guaranteed up to approximately \$39 million plus interest and expenses under the revolving loan, and up to approximately \$17 million, initially, under the rental agreement. The obligations under the rental agreement guarantee diminish over time through 2011 as the term loan is repaid. However, under certain circumstances of default by the other tenant of the photomask facility under its rental agreement with BAC and certain circumstances of default by more than one joint venture partner under its rental agreement guarantee obligations, the maximum potential amount of our obligations under the rental agreement guarantee is approximately \$140 million. As of June 27, 2004, \$72 million was drawn under the revolving credit facility, and \$74 million was drawn under the term loan.

### **Other Financial Matters**

#### **Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements**

In November 2003, we announced our intention to construct and facilitate a 300-millimeter wafer fabrication facility, Fab 36. Fab 36 is owned by a German limited partnership named AMD Fab 36 Limited Liability Company & Co. KG, or AMD Fab 36 KG, and is located in Dresden, Germany, adjacent to Fab 30. We control the management of AMD Fab 36 KG through a wholly-owned Delaware subsidiary, AMD Fab 36 LLC, which is a general partner of AMD Fab 36 KG. We expect that Fab 36 will produce future generations of our microprocessor products, and that it will be in volume production in 2006. AMD, Leipziger Messe GmbH, a nominee of the State of Saxony, Fab 36 Beteiligungs GmbH, an investment consortium arranged by M+W Zander Facility Engineering GmbH, the general contractor for the project, and a consortium of banks are providing financing for the project. We also anticipate receiving up to approximately \$660 million in grants and allowances from federal and state German authorities for the project. We expect that capital expenditures for Fab 36 through 2007 will be approximately \$2.5 billion in the aggregate, of which approximately \$460 million will occur during the remainder of 2004.

On April 21, 2004, AMD Fab 36 KG entered into a term loan agreement and other related agreements (the Fab 36 Loan Agreements) with a consortium of banks led by Dresdner Bank AG, a German financial institution to finance the purchase of equipment and tools required to construct and operate Fab 36. AMD Fab 36 KG pledged substantially all of its current and future assets as security under the Fab 36 Loan Agreements. AMD guaranteed the obligations of AMD Fab 36 KG to the lenders under the Fab 36 Loan Agreements. This guarantee also guarantees repayment of grants and allowances by AMD Fab 36 KG, should such repayment be required pursuant to the terms of the subsidies provided by the federal and

## [Table of Contents](#)

state German authorities. Pursuant to the terms of the guarantee, we have to comply with specified adjusted tangible net worth and EBITDA financial covenants if the sum of our and our subsidiaries' cash, cash equivalents and short-term investments, less the amount outstanding under any third-party revolving credit facility or term loan agreement with an original maturity date for amounts borrowed of up to one year (group consolidated cash), declines below the following amounts:

| Amount         | if Moody's<br>Rating is at least |     | if Standard & Poor's Rating<br>is at least |
|----------------|----------------------------------|-----|--|
| (In thousands) |                                  |     |  |
| USD500,000     | B1 or lower                      | and | B+ or lower                                |
| USD425,000     | Ba3                              | and | BB-  |
| USD400,000     | Ba2                              | and | BB   |
| USD350,000     | Ba1                              | and | BB+  |
| USD300,000     | Baa3 or better                   | and | BBB-or better                              |

As of June 27, 2004, group consolidated cash was greater than \$500 million and the preceding financial covenants were not applicable.

Also on April 21, 2004, AMD, AMD Fab 36 KG, AMD Fab 36 LLC, AMD Fab 36 Holding GmbH, a German company and wholly-owned subsidiary of AMD that owns substantially all of our limited partnership interest in AMD Fab 36 KG, and AMD Fab 36 Admin GmbH, a German company and wholly owned subsidiary of AMD Fab 36 Holding that owns the remainder of our limited partnership interest in AMD Fab 36 KG, (collectively referred to as the AMD companies) entered into a series of agreements (the partnership agreements) with the unaffiliated limited partners of AMD Fab 36 KG, Leipziger Messe and Fab 36 Beteiligungs, relating to the rights and obligations with respect to their equity and membership interests in AMD Fab 36 KG. The partnership, AMD Fab 36 KG, is established for an indefinite period of time. A partner may terminate its participation in the partnership by giving twelve months advance notice to the other partners. The termination becomes effective at the end of the year during which the notice was given. Other than for good cause, a partner's termination will not be effective before December 31, 2015.

Because most of the amounts under the Fab 36 Loan Agreements and the partnership agreements are denominated in euros, the dollar amounts are subject to change based on applicable exchange rates. We used the exchange rate at June 27, 2004, of 0.823 euro to one U.S. dollar, to translate the amounts denominated in euros into U.S. dollars.

---

## Table of Contents

The Fab 36 Loan Agreements provide funding for the purchase of equipment and tools required to construct and operate Fab 36. The funding consists of:

- equity contributions and revolving loans and a guarantee from, and full cost reimbursement through, AMD;
- investments from the unaffiliated limited partners of AMD Fab 36 KG;
- loans from a consortium of banks; and
- subsidies consisting of grants and allowances, and a loan guarantee from the Federal Republic of Germany and the State of Saxony.

As of June 27, 2004 we had provided \$209 million of equity investments in AMD Fab 36 KG and we had not provided any loans. These amounts have been eliminated in our consolidated financial statements.

In addition to support from us, the consortium of banks referred to above will make available up to \$851 million in loans to AMD Fab 36 KG upon its achievement of specified milestones, including attainment of “technical completion” at Fab 36, which requires certification by the banks’ technical advisor that AMD Fab 36 KG has a wafer fabrication process suitable for high volume production of advanced microprocessors and has achieved specified levels of average wafer starts per week and average wafer yields, as well as cumulative capital expenditures of approximately \$1.2 billion. We currently anticipate that AMD Fab 36 KG will attain these milestones and first be able to draw on the loans in 2006. The amounts outstanding under the Fab 36 Loan Agreements are repayable in quarterly installments commencing on September 2007 and terminating on March 2011.

The partnership agreements set forth each limited partner’s aggregate capital contribution to AMD Fab 36 KG and the milestones for such contributions. Pursuant to the terms of the partnership agreements, AMD, through AMD Fab 36 Holding and AMD Fab 36 Admin, agreed to provide an aggregate of \$711 million; Leipziger Messe agreed to provide an aggregate of \$243 million and Fab 36 Beteiligungs agreed to provide an aggregate of \$146 million. The capital contributions of Leipziger Messe and Fab 36 Beteiligungs are comprised of limited partnership contributions and silent partnership contributions. The unaffiliated partners’ contributions are due at various dates upon the achievement of milestones relating to the construction and operation of Fab 36. The partnership agreements also specify that the unaffiliated partners receive a guaranteed rate of return of between 11 percent and 13 percent per annum of their total investment depending upon the monthly wafer output of Fab 36. We guaranteed these payments by AMD Fab 36 KG.

Pursuant to the terms of the partnership agreements and subject to the prior consent of the Federal Republic of Germany and the State of Saxony, AMD Fab 36 Holding and AMD Fab 36 Admin have a call option over the limited partnership portion of the interests held by Leipziger Messe and Fab 36 Beteiligungs (the limited partnership interests), first exercisable three and one-half years after the relevant partner has completed the applicable capital contribution and every three years thereafter. Also, commencing five years after completion of the relevant partner’s capital contribution, Leipziger Messe and Fab 36 Beteiligungs each have the right to sell their limited partnership interest to third parties (other than competitors), subject to a right of

---

## [Table of Contents](#)

first refusal held by AMD Fab 36 Holding and AMD Fab 36 Admin, or to put their limited partnership interest to AMD Fab 36 Holding and AMD Fab 36 Admin. The put option is thereafter exercisable every three years. Leipziger Messe and Fab 36 Beteiligungs also have a put option in the event they are outvoted at AMD Fab 36 KG partners' meetings with respect to certain specified matters such as increases in the partners' capital contributions beyond those required by the partnership agreements, investments significantly in excess of the business plan, or certain dispositions of the limited partnership interests of AMD Fab 36 Holding and AMD Fab 36 Admin. The purchase price under the put option is the partner's capital account balance plus accumulated or accrued profits due to such limited partner. The purchase price under the call option is the same amount, plus a premium of \$4.3 million to Leipziger Messe or \$2.6 million to Fab 36 Beteiligungs. The right of first refusal price is the lower of the put option price or the price offered by the third party that triggered the right. We guaranteed the payments under the put options.

In addition, AMD Fab 36 Holding and AMD Fab 36 Admin are obligated to repurchase the silent partnership portion of Leipziger Messe's and Fab 36 Beteiligungs' contributions (the silent partnership interests) over time. Specifically, AMD Fab 36 Holding and AMD Fab 36 Admin are required to repurchase Leipziger Messe's silent partnership interest of \$97 million in annual 25 percent installments commencing one year after Leipziger Messe has completed its applicable contributions, and Fab 36 Beteiligungs' silent partnership interest of \$73 million in annual 20 percent installments commencing one year after Fab 36 Beteiligungs has completed its applicable contributions.

For accounting and financial reporting purposes under United States generally accepted accounting principles, we will initially classify the silent partnership contributions as long-term debt, based on their fair value because of the mandatory redemption features described in the prior paragraph. Each accounting period, we will increase the ultimate redemption value of the silent partnership contributions by the guaranteed rate of return of between 11 percent to 13 percent. We will treat this increase as interest expense.

The remaining capital contributions that AMD Fab 36 KG expects to receive from Leipziger Messe and Fab 36 Beteiligungs, or the limited partnership contributions, are subject to the put and call provisions referenced above. These contributions are not mandatorily redeemable, but rather are subject to redemption outside of the control of AMD Fab 36 Holding and AMD Fab 36 Admin. Upon consolidation, we will initially record these contributions as minority interest, based on their fair value. Each accounting period, we will increase the ultimate redemption value of these contributions by the guaranteed rate of return of between 11 percent to 13 percent. We will treat this increase as minority interest allocation. No separate accounting is required for the put and call options because they are not freestanding instruments and not considered as derivatives under SFAS 133, Accounting for Derivative Instruments and Hedging Activities. However, in the event of exercise of the call option by the AMD Fab 36 Holding and AMD Fab 36 Admin, the call premium referenced above will be recorded as additional minority interest allocation.

---

## [Table of Contents](#)

In addition to support from us and the consortium of banks referred to above, the Federal Republic of Germany and the State of Saxony have agreed to support the Fab 36 project. We anticipate such support to be in the form of:

- deficiency guarantees equal to 80 percent of the amounts outstanding under the Fab 36 Loan Agreements; and
- subsidies consisting of grants and allowances totaling up to approximately \$660 million.

As of June 27, 2004, AMD Fab 36 KG has not received any grants or allowances.

The Fab 36 Loan Agreements also require that we:

- provide funding to AMD Fab 36 KG if cash shortfalls occur, including funding shortfalls in government subsidies resulting from any defaults caused by AMD Fab 36 KG or its affiliates; and
- guarantee 100 percent of AMD Fab 36 KG's obligations under the Fab 36 Loan Agreements until the bank loans are repaid in full.

AMD Fab 36 KG would be in default under the Fab 36 Loan Agreements if we or any of the AMD companies fail to comply with certain obligations thereunder or upon the occurrence of certain events and if, after the occurrence of the event, the lenders determine that their legal or risk position is adversely affected. Circumstances that could result in a default include:

- the failure of any limited partner to make contributions to AMD Fab 36 KG as required under the partnership agreements or our failure to provide loans to AMD Fab 36 KG as required under the Fab 36 Loan Agreements;
- the failure to pay any amount due under the Fab 36 Loan Agreements within five days of the due date;
- the occurrence of any event which the lenders reasonably believe has had or is likely to have a material adverse effect on the business, assets or condition of AMD Fab 36 KG or AMD or their ability to perform under the Fab 36 Loan Agreements;
- filings or proceedings in bankruptcy or insolvency with respect to us, AMD Fab 36 KG or any limited partner;
- the occurrence of a change in control (as defined in the Fab 36 Loan Agreements) of AMD;
- AMD Fab 36 KG's noncompliance with certain affirmative and negative covenants, including restrictions on payment of profits, dividends or other distributions except in limited circumstances and restrictions on incurring additional indebtedness, disposing of assets and repaying subordinated debt; and
- AMD Fab 36 KG's noncompliance with certain financial covenants, including minimum tangible net worth, minimum interest cover ratio, loan to fixed asset value ratio and a minimum cash covenant.

---

## Table of Contents

In general, any default with respect to other indebtedness of AMD Fab 36 KG that results in recourse to AMD Fab 36 KG of more than \$6 million or any default with respect to indebtedness made or guaranteed by AMD that results in recourse to us of more than \$24 million, and that is not cured, would result in a cross-default under the Fab 36 Loan Agreements.

The occurrence of a default under the Fab 36 Loan Agreements would permit the lenders to accelerate the repayment of all amounts outstanding under the Fab 36 Loan Agreements. In addition, the occurrence of a default under these agreements would likely result in a cross-default under the Indentures governing our 4.75% Debentures and 4.50% Notes. We cannot assure that we would be able to obtain the funds necessary to fulfill these obligations. Any such failure would have a material adverse effect on us.

### **Spansion LLC**

During the four-year period commencing on June 30, 2003, we are obligated to provide Spansion LLC with additional funding to finance operations shortfalls, if any. Generally, Spansion LLC is first required to seek any required financing from external sources. However, if such third-party financing is not available, we must provide funding to Spansion LLC equal to our pro-rata ownership interest in Spansion LLC, which is currently 60 percent. At this time, we believe that Spansion LLC will be able to obtain external financing when needed. However, there is no assurance that external financing will be available when needed and currently we cannot estimate the amount of additional funding, if any, that we will be required to provide during this four-year period.

### **Short-Term and Long-Term Liquidity**

We believe that cash flows from operations and current cash balances, together with available external financing and the extension of existing facilities, will be sufficient to fund operations and capital investments over the next twelve months and longer-term. Should additional funding be required, such as to meet the payment obligation of our long term debt when due, or to finance the construction and facilitization of Fab 36, we may need to raise the required funds through borrowings or public or private sales of debt or equity securities. Such funding may be obtained through bank borrowings, from additional securities which may be issued from time to time under an effective registration statement, through the issuance of securities in a transaction exempt from registration under the Securities Act of 1933, or a combination of one or more of the foregoing. We believe that, in the event of such requirements, we will be able to access the capital markets on terms and in amounts adequate to meet our objectives. However, given the possibility of changes in market conditions or other occurrences, there can be no certainty that such funding will be available in needed quantities or on terms favorable to us.

### **Outlook**

During the third quarter of 2004, we expect net sales for both our Computation Products and Memory Products segments to increase and we expect total net sales to increase moderately compared with the second quarter of 2004.

## [Table of Contents](#)

For our Computation Products segment, we expect net sales to increase in the third quarter both because of increased unit shipments, primarily of microprocessors for the server and notebook segments, and moderately higher average selling prices from increased sales of AMD64-based microprocessors. By the end of fiscal 2004, we expect that approximately 50 percent of net sales from our Computation Products segment will be from sales of AMD64-based microprocessors. For our Memory Products segment, we expect net sales to increase in the third quarter due to increased sales of higher density products and higher unit shipments.

During the third and fourth quarters of 2004, we expect marketing, general and administrative expenses to increase approximately 10 to 15 percent compared with the first and second quarters of 2004 as we increase our advertising and branding efforts for our AMD64-based microprocessor products and our new AMD Sempron microprocessors, a value brand of processors for use in PCs and notebooks that we introduced in July 2004. During this time period, we expect gross margins to improve compared with the first and second quarters of 2004. In addition, for fiscal 2004, we expect capital expenditures of approximately \$1.5—\$1.6 billion.

### **Supplementary Stock-Based Incentive Compensation Disclosures**

#### *Section I. Option Program Description*

Our stock option programs are intended to attract, retain and motivate highly qualified employees. On April 29, 2004, our stockholders approved the 2004 Equity Incentive Plan (the 2004 Plan), which had previously been approved by our Board of Directors. Stock options available for grant under our equity compensation plans that were in effect before April 29, 2004, including those that were not approved by our stockholders, were consolidated into the 2004 Plan. As of April 29, 2004, equity awards will only be made from the 2004 Plan. Under our prior equity incentive plans and the 2004 Plan, key employees have been granted incentive stock options (ISOs) and nonqualified stock options (NSOs) to purchase our common stock. Generally, options vest and become exercisable over a four year period from the date of grant and expire five to ten years after the date of grant. ISOs granted under the plans have exercise prices of not less than 100 percent of the fair market value of the common stock on the date of grant. Exercise prices of NSOs range from \$0.01 to the fair market value of the common stock on the date of grant.

#### *Section II. General Option Information*

The following is a summary of stock option activity for the six months ended June 27, 2004 and fiscal year ended December 28, 2003:

|  | <b>Six Months Ended<br/>June 27, 2004</b> |   | <b>Year Ended<br/>December 28, 2003</b> |   |
|--|---|---|---|---|
|  | <b>Number<br/>of Shares</b>               | <b>Weighted-<br/>Average<br/>Exercise<br/>Price</b> | <b>Number<br/>of Shares</b>             | <b>Weighted-<br/>Average<br/>Exercise<br/>Price</b> |
|  | (Thousands except share price)            |   |   |   |
| Options:                                   |   |   |   |   |
| Outstanding at beginning of period         | 40,969                                    | \$ 12.92  | 60,408                                  | \$ 18.58  |
| Granted                                    | 20,035                                    | 14.73   | 5,575                                   | 9.46  |
| Canceled                                   | (2,112)                                   | 25.60   | (22,642)                                | 27.69   |
| Exercised                                  | (3,292)                                   | 10.22   | (2,372)                                 | 7.86  |
| Outstanding at end of period               | 55,600                                    | \$ 13.25  | 40,969                                  | \$ 12.92  |
| Exercisable at end of period               | 28,099                                    | \$ 13.05  | 28,624                                  | \$ 13.66  |
| Available for grant at beginning of period | 29,613                                    |   | 13,019                                  |   |
| Available for grant at end of period       | 28,117                                    |   | 29,613                                  |   |



[Table of Contents](#)

In-the-money and out-of-the-money stock option information as of June 27, 2004, was as follows:

| As of End of Quarter             | Exercisable   |                                 | Unexercisable |                                 | Total                       |                                 |
|----------------------------------|---------------|---------------------------------|---------------|---------------------------------|-----------------------------|---------------------------------|
|                                  | Shares        | Weighted-Average Exercise Price | Shares        | Weighted-Average Exercise Price | Shares                      | Weighted-Average Exercise Price |
| In-the-Money                     | 21,163        | \$ 9.36                         | 25,512        | N/A <sup>(2)</sup>              | 46,675                      | \$ 11.40                        |
| Out-of-the-Money <sup>(1)</sup>  | 6,936         | \$ 24.30                        | 1,989         | N/A <sup>(2)</sup>              | 8,925                       | \$ 22.91                        |
| <b>Total Options Outstanding</b> | <b>28,099</b> | <b>\$ 13.05</b>                 | <b>27,501</b> |                                 | <b>55,600<sup>(3)</sup></b> | <b>\$ 13.25</b>                 |

<sup>(1)</sup> Out-of-the-money stock options have an exercise price equal to or above \$15.50, the closing price of AMD's common stock on June 25, 2004, the last trading day of the second quarter of 2004.

<sup>(2)</sup> Weighted average exercise price information is not available.

<sup>(3)</sup> Includes 357,851 shares granted from treasury stock as non-plan grants.

*Section III. Distribution and Dilutive Effect of Options*

Options granted to employees, including officers, and non-employee directors were as follows:

|   | YTD 2004 | 2003   | 2002   |
|---|----------|--------|--------|
| Net grants <sup>(1)</sup> during the period as % of outstanding shares <sup>(2)</sup>       | 5.06%    | -4.87% | 2.44%  |
| Grants to listed officers <sup>(3)</sup> during the period as % of total options granted    | 2.00%    | 11.77% | 14.33% |
| Grants to listed officers <sup>(3)</sup> during the period as % of outstanding shares       | 0.11%    | 0.19%  | 0.49%  |
| Cumulative options held by listed officers <sup>(3)</sup> as % of total options outstanding | 16.79%   | 22.90% | 17.93% |

<sup>(1)</sup> Options granted are net of options canceled.

<sup>(2)</sup> Outstanding shares as of June 27, 2004, December 28, 2003 and December 29, 2002.

<sup>(3)</sup> The "listed officers" are those executive officers listed in the summary compensation table in our proxy statement for our annual meeting of stockholders held in 2004, 2003 and 2002.

[Table of Contents](#)

Section IV. Executive Options

Options granted to listed officers for the six months ended June 27, 2004 were as follows:

| Name <sup>(1)</sup> | 2004 Option Grants                                |   |                          |                 | Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term |              |
|---------------------|---|---|--------------------------|-----------------|--|--------------|
|                     | Number of Securities Underlying Options Per Grant | Percent of Total Options Granted to Employees as of June 27, 2004 | Exercise Price Per Share | Expiration Date | 5%   | 10%          |
| Hector de J. Ruiz   | 125,000   | 0.62%   | \$ 14.64                 | 2/2/2014        | \$ 1,150,877   | \$ 2,916,549 |
|                     | 75,000  | 0.37%   | \$ 14.22                 | 4/30/2011       | \$ 434,173   | \$ 1,011,807 |
| W. J. Sanders III   | —   | N/A   | N/A                      | N/A             | N/A  | N/A          |
| William T. Siegle   | 18,750  | 0.09%   | \$ 14.64                 | 2/2/2014        | \$ 172,632   | \$ 437,482   |
|                     | 6,250   | 0.03%   | \$ 14.22                 | 4/30/2011       | \$ 36,181  | \$ 84,317    |
|                     | 25,000  | 0.12%   | \$ 14.22                 | 4/30/2011       | \$ 144,724   | \$ 337,269   |
| Derrick R. Meyer    | 37,500  | 0.19%   | \$ 14.64                 | 2/2/2014        | \$ 345,263   | \$ 874,965   |
|                     | 37,500  | 0.19%   | \$ 14.22                 | 4/30/2011       | \$ 217,086   | \$ 505,903   |
| Bertrand F. Cambou  | 37,500  | 0.19%   | \$ 14.64                 | 2/2/2014        | \$ 345,263   | \$ 874,965   |
|                     | 37,500  | 0.19%   | \$ 14.22                 | 4/30/2011       | \$ 217,086   | \$ 505,903   |

<sup>(1)</sup> The “listed officers” are those executive officers listed in the summary compensation table in our proxy statement for our annual meeting of stockholders held on April 29, 2004.

Option exercises during the six months ended June 27, 2004 and option values for listed officers for this period were as follows:

| Name <sup>(1)</sup> | Shares Acquired on Exercise | Value Realized <sup>(2)</sup> | Number of Securities Underlying Unexercised Options at June 27, 2004 |               | Values of Unexercised In-the Money Options at June 27, 2004 |               |
|---------------------|-----------------------------|-------------------------------|--|---------------|---|---------------|
|                     |                             |                               | Exercisable  | Unexercisable | Exercisable   | Unexercisable |
| Hector de J. Ruiz   | —                           | \$ —                          | 2,430,577  | 1,844,423     | \$ 796,318  | \$ 2,415,932  |
| W. J. Sanders III   | 400,000                     | \$ 994,089                    | 3,400,000  | —             | \$ 17,864,000   | \$ —          |
| William T. Siegle   | 12,000                      | \$ 202,520                    | 597,251  | 99,999        | \$ 2,088,733  | \$ 407,610    |
| Derrick R. Meyer    | —                           | \$ —                          | 419,806  | 203,644       | \$ 1,438,462  | \$ 846,977    |
| Bertrand F. Cambou  | —                           | \$ —                          | 159,170  | 178,330       | \$ 238,882  | \$ 470,618    |

<sup>(1)</sup> The “listed officers” are those executive officers listed in the summary compensation table in our proxy statement for our annual meeting of stockholders held on April 29, 2004.

<sup>(2)</sup> Value for these purposes is based solely on the difference between market value of underlying shares on the applicable date (i.e., date of exercise or six months ended June 27, 2004) and exercise price of options. For example, Dr. Siegle had shares withheld to pay taxes, but held the remainder of the shares he purchased through this stock option exercise.

## [Table of Contents](#)

### *Section V. Equity Compensation Plan Information*

The number of shares issuable upon exercise of outstanding options granted to employees and non-employee directors, as well as the number of shares remaining available for future issuance under our 2004 Plan as of June 27, 2004, are summarized in the following table:

| <u>Plan category</u>                                   | <u>Number of Securities to be Issued Upon Exercise of Outstanding Options (a)</u> | <u>Weighted-Average Exercise Price of Outstanding Options (b)</u> | <u>Number of Securities Remaining Available for Future Issuance Under 2004 Plan (Excluding Securities Reflected in Column (a))<sup>(3)</sup> (c)</u> |
|--|---|---|--|
| Equity compensation plans approved by stockholders     | 30,960,120 <sup>(1)</sup>   | \$ 14.53  | 28,117,024   |
| Equity compensation plans not approved by stockholders | 24,640,000 <sup>(2)</sup>   | \$ 11.64  | —  |
| <b>TOTAL</b>   | <b>55,600,120</b>   |   | <b>28,117,024</b>  |

<sup>(1)</sup> After April 29, 2004, all awards are made under our stockholder-approved 2004 Plan.

<sup>(2)</sup> Includes 357,851 shares granted from treasury stock as non-plan grants.

<sup>(3)</sup> A total of 31 million shares were available for grant under our 2004 Plan as of April 29, 2004. In addition, shares that are cancelled from outstanding awards under the 2004 Plan or from our prior equity compensation plans, including those that were not approved by stockholders, become available for grant under the 2004 Plan and may be reissued as new awards.

### **Risk Factors**

*We plan for significant capital expenditures in fiscal 2004, and if we cannot generate the capital required for these capital expenditures and other ongoing operating expenses through operating cash flow and external financing activities, we may be materially adversely affected.* We plan for capital expenditures of approximately \$1.5—\$1.6 billion in fiscal 2004. Our ability to fund these expenditures depends on generating sufficient cash flow from operations and the availability of external financing, including third-party investments for the Fab 36 project. Our capital expenditures for 2004 include approximately \$600 million for the Fab 36 project, approximately \$200 million for the Fab 30 project and approximately \$600 million for increasing the manufacturing capacity of our Flash memory fabrication and assembly and test facilities and for other research and development activities. As of June 27, 2004, we spent approximately \$560 million of our total projected fiscal 2004 capital expenditures.

During the four-year period that commenced June 30, 2003, we are also obligated to provide Spansion LLC with additional funding to finance operational cash flow needs. Generally, Spansion LLC is first required to seek any required financing from external sources. However, if such third-party financing is not available, we must provide funding to Spansion LLC equal to our pro-rata ownership interest in Spansion LLC, which is currently 60 percent.

---

## [Table of Contents](#)

In addition, a significant amount of the costs of the Fab 36 project are denominated in euros. When we initially forecasted our budget for the Fab 36 project, we modeled certain financial assumptions, including that the foreign exchange rate, over time, would be one euro to one U.S. dollar. Since our initial forecast, the U.S. dollar has depreciated against the euro. If the U.S. dollar continues to depreciate against the euro, the costs of the Fab 36 project may be higher than we planned, which could have a material adverse effect on us.

These capital expenditures, together with ongoing operating expenses, will be a substantial drain on our cash flow and will decrease our cash balances. The timing and amount of our capital requirements cannot be precisely determined at this time and will depend on a number of factors, including demand for products, product mix, changes in semiconductor industry conditions and competitive factors. We regularly assess markets for external financing opportunities, including debt and equity. Additional debt or equity financing may not be available when needed or, if available, may not be available on satisfactory terms. Our inability to obtain needed debt and/or equity financing or to generate sufficient cash from operations may require us to abandon projects or curtail capital expenditures. If we abandon projects such as the Fab 36 project, we may have to write off related costs that we capitalized and we may be required to continue to make payments or otherwise be liable pursuant to then-existing contracts that we cannot terminate at will or without significant penalties. If we curtail capital expenditures or abandon projects, we could be materially adversely affected.

*We have a substantial amount of debt and debt service obligations, and may incur additional debt, which could adversely affect our financial position and prevent us from fulfilling our obligations under the agreements governing our indebtedness.* We have a substantial amount of debt and we may incur additional debt in the future. As of June 27, 2004, our total debt was \$2.0 billion and stockholders' equity was \$2.5 billion. In addition, as of June 27, 2004, we had up to \$125 million of availability under our July 2003 Loan Agreement (subject to our borrowing base). We had also guaranteed approximately \$203 million of debt, which is not reflected as debt on our balance sheet.

In addition, we currently anticipate that AMD Fab 36 KG will be able to draw under the Fab 36 Loan Agreements during 2006. Repayments of amounts outstanding under this facility commence on September 30, 2007 and continue on a quarterly basis through March 31, 2011. We guaranteed 100 percent of the obligations of AMD Fab 36 KG to the lenders under the Fab 36 Loan Agreements and repayment by AMD Fab 36 KG of grants and allowances provided by the Federal Republic of Germany and the State of Saxony should such repayment be required pursuant to the terms of the subsidy arrangements.

In March 2004 Spansion Japan entered into a revolving credit facility agreement in the aggregate amount of 15 billion yen (approximately \$139 million as of June 27, 2004). As of June 27, 2004, the full amount of this facility, subject to the value of Spansion Japan's accounts receivable from Fujitsu, was available.

---

## [Table of Contents](#)

Our high degree of leverage may:

- limit our ability to use our cash flow or obtain additional financing for future working capital, capital expenditures, acquisitions or other general corporate purposes;
- require a substantial portion of our cash flow from operations to make debt service payments;
- limit our flexibility to plan for, or react to, changes in our business and industry;
- place us at a competitive disadvantage compared to our less leveraged competitors; and
- increase our vulnerability to the impact of adverse economic and industry conditions.

Our ability to make payments on and to refinance our debt or our guarantees of other parties' debts will depend on our financial and operating performance, which may fluctuate significantly from quarter to quarter, and is subject to prevailing economic conditions and financial, business and other factors, many of which are beyond our control.

We cannot assure you that we will continue to generate sufficient cash flow or that we will be able to borrow funds under our credit facilities in amounts sufficient to enable us to service our debt, or meet our working capital and capital expenditure requirements. If we are not able to generate sufficient cash flow from operations or to borrow sufficient funds to service our debt, due to borrowing base restrictions or otherwise, we may be required to sell assets or equity, reduce capital expenditures, refinance all or a portion of our existing debt or obtain additional financing. We cannot assure you that we will be able to refinance our debt, sell assets or equity, or borrow more funds on terms acceptable to us, if at all.

*If we were to lose Microsoft Corporation's support for our products, or if there is a significant delay in Microsoft's release of an operating system that works with our AMD64 technology, our ability to market our processors could be materially adversely affected.* Our ability to innovate beyond the x86 instruction set controlled by Intel depends partially on Microsoft's designing and developing its operating systems to run on or support our microprocessor products. If Microsoft does not continue to design and develop its operating systems so that they work with our x86 instruction sets, including a timely introduction of an operating system that works with our AMD64 technology introduced with our AMD Opteron and AMD Athlon 64 processors, independent software providers may forego designing their software applications to take advantage of our innovations and customers may not purchase PCs with our microprocessors. If we fail to retain the support of Microsoft our ability to market our processors could be materially adversely affected.

In July 2004, Microsoft announced a delay in the release of its Windows Server 2003 Service Pack 1, Windows Server 2003 for 64-Bit Extended Systems and Windows XP 64-Bit for 64-Bit Extended Systems. The new Windows editions are designed to take advantage of 64-bit

---

## [Table of Contents](#)

extensions to the standard x86 instruction set. Microsoft is currently estimating that the release of this software will occur in the first half of 2005. Previously, Microsoft estimated the release date for this software to be in late 2004. This delay could adversely impact the timing of development of 64-bit applications by independent software providers and the adoption of 64-bit computing by end-users. As a result, this delay could have a material adverse effect on our ability to sell our AMD Opteron and AMD Athlon 64 processors.

*We must achieve further market acceptance of our new 64-bit technology, AMD64, or we will be materially adversely affected.* We introduced our AMD Opteron processors in April 2003, and we introduced our AMD Athlon 64 processors in September 2003. We designed these processors to provide users with the ability to take advantage of 64-bit applications while preserving their ability to run existing 32-bit applications on servers and workstations and on desktop and mobile PCs. The success of these processors is subject to risks and uncertainties including:

- continued market acceptance of our AMD64 technology, including the willingness of users to purchase products with 64-bit capability prior to the availability of operating systems and software applications that take full advantage of our AMD64 technology;
- the support of operating system and application program providers for our 64-bit instruction set, including timely development of 64-bit applications.
- our ability to produce these processors in a timely manner on new process technologies, including 90-nanometer silicon-on-insulator technology, in the volume and with the performance and feature set required by customers; and
- the availability, performance and feature set of motherboards and chipsets designed for these processors.

*We cannot be certain that our substantial investments for research and development of process technologies will lead to timely improvements in technology and equipment used to fabricate our products or that we will have sufficient resources to invest in the level of research and development that is required to remain competitive.* We make substantial investments in research and development for process technologies in an effort to design and manufacture leading-edge microprocessors. In December 2002, we executed an agreement with IBM to jointly develop new logic process technologies, particularly 65- and 45-nanometer technologies to be implemented on 300-millimeter silicon wafers, for use in producing future high-performance microprocessor products. The successful and timely development and implementation of silicon-on-insulator technology and the achievement of other milestones set forth in this agreement are critical to our AMD Opteron and AMD Athlon 64 microprocessors and to our ability to commence operations at Fab 36 in accordance with our planned schedule. From the beginning of 2002 through June 27, 2004, we paid approximately \$200 million to IBM in connection with agreements and services related to research and development activities. We cannot be certain that we will be able to

---

## [Table of Contents](#)

develop, or obtain or successfully implement leading-edge process technologies needed to fabricate future generations of our products profitably or on a timely basis. Furthermore, we cannot assure you that we will have sufficient resources to maintain the level of investment in research and development that is required for us to remain competitive or that our partnership with IBM will be successful.

*The semiconductor industry is highly cyclical and has experienced severe downturns that materially adversely affected, and may in the future materially adversely affect, our business.* The highly cyclical semiconductor industry has experienced significant downturns, often in connection with maturing product cycles, manufacturing overcapacity and declines in general economic conditions. Our historical financial results have also been subject to substantial fluctuations. Our financial performance has been, and may in the future be, negatively affected by these downturns. We incurred substantial losses during the most recent downturn, as a result of:

- the cyclical nature of the supply/demand imbalances in the semiconductor industry;
- a decline in demand for end-user products that incorporate our semiconductors;
- excess inventory levels in the channels of distribution, including our customers;
- excess production capacity; and
- accelerated declines in average selling prices.

If these conditions in the semiconductor industry occur in the future, we could be materially adversely affected.

*Fluctuations in the computer market may materially adversely affect us.* The Computation Products segment of our business is dependent upon the market for computers, including PCs and servers. Industry-wide fluctuations in the computer marketplace have materially adversely affected us in the past and may materially adversely affect us in the future. Depending on the growth rate of computers sold, sales of our microprocessors may not grow and may even decrease. If end user demand for PCs is below our expectations, or if market acceptance of our AMD Athlon 64, AMD Opteron or AMD Sempron processors by enterprises does not continue in accordance with our expectations, we could be materially adversely affected.

In addition, potential market share increases by customers who exclusively purchase microprocessors from Intel Corporation, such as Dell, Inc., could further materially adversely affect us.

*Declines in demand for cellular telephones may materially adversely affect us.* The Memory Products segment of our business is dependent upon the market for feature-rich cellular telephones. If demand for cellular telephones is below our expectations or if the

---

## Table of Contents

functionality of successive generations of cellular telephones does not require increasing NOR density, we could be materially adversely affected.

*If we are not successful in continuing to integrate the operations of Spansion LLC, we could be materially adversely affected.* Effective June 30, 2003, we and Fujitsu executed several agreements that resulted in the integration of our and Fujitsu's Flash memory operations.

Our anticipated benefits from this transaction are subject to, among other things, the following risks:

- the possibility that Spansion LLC will not be successful because of problems integrating the operations and employees of the two companies or achieving the efficiencies and other advantages intended by the transaction; and
- the possibility that global business and economic conditions will worsen, resulting in lower than currently expected demand for Flash memory products, particularly in the high-end cellular telephone sector.

We cannot assure you that we will be able to continue to successfully integrate these operations or that we will be able to achieve and sustain any benefit from Spansion LLC's creation.

*Intel Corporation's dominance of the microprocessor market, its position in the Flash memory market and its business practices may limit our ability to compete effectively.* Intel has dominated the market for microprocessors used in desktop and mobile PCs for many years. Intel is also a significant competitor in the server segment of the microprocessor market and in the Flash memory market. Intel's significant financial resources allow it to market its products aggressively, to target our customers and our channel partners with special incentives, and to discipline customers who do business with us. These aggressive activities can result in lower unit sales and average selling prices for our products, particularly microprocessors and Flash memory products, and adversely affect our margins and profitability. For example, Intel exerts substantial influence over PC manufacturers and their channels of distribution through the "Intel Inside" brand program and other marketing programs. As long as Intel remains in this dominant position, we may be materially adversely affected by its:

- pricing and allocation strategies and actions, including aggressive pricing for Flash memory products and microprocessors to increase market share;
- product mix and introduction schedules;
- product bundling, marketing and merchandising strategies;
- exclusivity payments to its current and potential customers;
- control over industry standards, PC manufacturers and other PC industry participants, including motherboard, chipset and basic input/output system, or BIOS, suppliers; and
- user brand loyalty.



---

## [Table of Contents](#)

Because of its dominant position in the microprocessor market, Intel has been able to control x86 microprocessor and PC system standards and dictate the type of products the microprocessor market requires of Intel's competitors. Intel also dominates the PC system platform. As a result, PC OEMs are highly dependent on Intel, less innovative on their own and, to a large extent, are distributors of Intel technology. Additionally, Intel is able to drive de facto standards for x86 microprocessors that could cause us and other third-party companies to have delayed access to such standards. In marketing our microprocessors to OEMs, we depend on third-party companies other than Intel for the design and manufacture of core-logic chipsets, graphics chips, motherboards, BIOS software and other components. In recent years, many of these third-party designers and manufacturers have lost significant market share to Intel or exited the business. In addition, these companies produce chipsets, motherboards, BIOS software and other components to support each new generation of Intel's microprocessors, and Intel has significant leverage over their business opportunities.

We do not currently plan to develop microprocessors that are bus interface protocol compatible with Intel microprocessors because our patent-cross license agreement with Intel does not extend to microprocessors that are bus interface protocol compatible with Intel's current and future generation processors. Thus, our microprocessors are not designed to function with motherboards and chipsets designed to work with Intel microprocessors. Our ability to compete with Intel in the market for microprocessors will depend on our continued success in developing and maintaining relationships with infrastructure providers in order to ensure that these third-party designers and manufacturers design PC platforms to support new generations of our microprocessors. A failure of the designers and producers of motherboards, chipsets and other system components to support our microprocessor offerings, particularly our AMD64-based microprocessors, could have a material adverse effect on us.

We expect Intel to maintain its dominant position in the microprocessor market, to continue to be a significant competitor in the Flash memory market and to continue to invest heavily in research and development, new manufacturing facilities and other technology companies. Intel has substantially greater financial resources than we do and accordingly spends substantially greater amounts on research and development and production capacity than we do. We expect competition from Intel to increase in 2004 and beyond to the extent Intel reduces prices on its microprocessor and/or Flash memory products and as Intel introduces new competitive products. For example, during June 2004 Intel announced the availability of a 64-bit processor for servers and workstations that runs existing 32-bit software applications. These processors compete with our AMD Opteron microprocessors. In addition, Intel announced that it will offer 64-bit processors for the desktop market and other market segments that will be able to run existing 32-bit software applications in a time frame based on both timing and availability of the infrastructure required to support them and customer demand. These products would compete with our AMD Athlon 64 microprocessors. Moreover, Intel currently manufactures certain of its microprocessor products on 300-millimeter wafers using 90-nanometer process technology. Use of 90-nanometer technology

---

## [Table of Contents](#)

can result in products that are higher performing, use less power and that cost less to manufacture. Use of 300-millimeter wafers can decrease manufacturing costs and increase capacity by yielding more equivalent chips per wafer than 200-millimeter wafers. We are currently transitioning to 90-nanometer process technology and we expect to transition to using 300-millimeter wafers in 2006. As a result, we may be more vulnerable to Intel's aggressive pricing strategies for microprocessor products. Intel's strong position in the microprocessor market, its existing relationships with top-tier OEMs and its aggressive pricing strategies could result in lower unit sales and average selling prices for our products, which could have a material adverse effect on us.

*If we are unable to develop, produce and successfully market higher-performing microprocessor products, we may be materially adversely affected.* The microprocessor market is characterized by short product life cycles and migration to ever-higher performance microprocessors. To compete successfully, we must transition to new process technologies at a fast pace and offer higher-performance microprocessors in significantly greater volumes at competitive prices. If we fail to achieve yield and volume goals or to offer higher-performance microprocessors in significant volume on a timely basis and at competitive prices, we could be materially adversely affected.

To be successful, we must increase sales of our x86 microprocessor products to existing customers and develop new customers in both consumer and commercial markets, particularly the latter. Our production and sales plans for microprocessors are subject to other risks and uncertainties, including:

- continued market acceptance for the AMD Opteron and AMD Athlon 64 microprocessors, which rely on market acceptance and demand for our AMD64 technology;
- market acceptance of our AMD Sempron microprocessors, a new value brand of processors for use in PCs and laptops that we introduced in July 2004;
- our ability to fund our planned 300-millimeter wafer fabrication facility and develop associated process technologies that will be required for long-term competitiveness;
- our ability to increase our share of the enterprise market with tier-one OEM customers in order to have the demand necessary to utilize the capacity of our planned 300-millimeter wafer fabrication facility;
- our ability to successfully market the AMD Opteron, AMD Athlon 64, AMD Sempron and AMD Athlon XP processors, which rely in part on market acceptance of a metric based on overall processor performance versus processor clock speed (measured in megahertz frequency);
- the pace at which we expect to be able to convert production in Fab 30 to 90-nanometer process technology;

---

## Table of Contents

- our ability to maintain adequate selling prices of microprocessors despite increasingly aggressive Intel pricing strategies, marketing programs, new product introductions and product bundlings of microprocessors, motherboards and chipsets;
- our ability, on a timely basis, to produce microprocessors in the volume and with the performance and feature set required by customers;
- our ability to attract and retain engineering and design talent;
- our ability to expand system design capabilities; and
- the availability and acceptance of motherboards and chipsets designed for our microprocessors.

Our ability to increase microprocessor product net sales and benefit fully from the substantial investments we have made and continue to make related to microprocessors also depends on the success of our AMD Sempron processors and the continuing success of our AMD Opteron, AMD Athlon 64 and AMD Athlon XP microprocessors. If we fail to achieve continued and expanded market acceptance of our microprocessors, we could be materially adversely affected.

*The loss of a significant customer for our Spansion Flash memory products in the high-end cellular telephone market, or a lack of continued market acceptance of MirrorBit technology may have a material adverse effect on us.* Since the third quarter of 2002, our Flash memory product sales growth was dependent on the strength in the high-end cellular phone market. To date, our sales in that market have been concentrated with a limited group of customers. In addition, we expect competition in the market for Flash memory devices to continue to increase as new competitors enter the Flash memory market, particularly the NOR segment, existing competing manufacturers introduce new products or pursue aggressive pricing strategies and industry wide production capacity increases. We may be unable to maintain or increase our market share in Flash memory devices as the market develops and other competitors introduce new competing products. A decline in unit sales of our Flash memory devices, lower average selling prices, a downturn in the cellular phone market or a loss of a significant cellular phone customer, could have a material adverse effect on us.

Spansion Flash memory products can be categorized into two main technologies: Floating gate and MirrorBit technology. MirrorBit technology is a memory cell architecture that enables Flash memory products to store two bits of data in a single memory cell thereby doubling the density or storage capacity of each memory cell. A lack of continued customer or market acceptance of MirrorBit technology, adoption of such technology at a slower rate than we anticipate, or any substantial difficulty in transitioning Flash memory products, including those based on MirrorBit technology, to any future process technology could reduce our ability to be competitive in the market and could have a material adverse effect on us.

---

## [Table of Contents](#)

*Spansion Flash memory products are based on the NOR architecture, and a significant market shift to the NAND architecture could materially adversely affect us.* Spansion Flash memory products are based on the Boolean logic-based NOR (Not Or) architecture, which is typically used for code execution. We do not currently manufacture products based on NAND (Not And) architecture, which typically offers greater storage capacity. During 2003, sales of products based on NAND architecture grew at higher rates than sales of NOR products. This resulted in the NAND vendors gaining a greater share of the overall Flash market. Any significant shift in the marketplace to products based on NAND architecture or other architectures may reduce the total market available to us and therefore reduce our market share, which could have a material adverse effect on us.

*Worldwide economic and political conditions may adversely affect demand for our products.* The last economic slowdown in the United States and worldwide, which began in the fourth quarter of 2000 and lasted until the second half of 2003, adversely affected demand for our products. Although economic conditions have continued to improve since the second half of 2003, another decline of the worldwide semiconductor market or a future decline in economic conditions or consumer confidence in any significant geographic area would likely decrease the overall demand for our products, which could have a material adverse effect on us. For example, China's economy has been growing at a fast pace over the past several years, and Chinese authorities have recently introduced various measures to slowdown the pace of economic growth. However, if Chinese authorities are not able to stage an orderly slowdown, or "soft landing," China's economy could be materially adversely affected. A decline in economic conditions in China could lead to declining worldwide economic conditions. If economic conditions decline, whether in China or worldwide, we could be materially adversely affected.

The occurrence and threat of terrorist attacks and the consequences of sustained military action in the Middle East have in the past, and may in the future, adversely affect demand for our products. In addition, terrorist attacks may negatively affect our operations directly or indirectly and such attacks or related armed conflicts may directly impact our physical facilities or those of our suppliers or customers. Furthermore, these attacks may make travel and the transportation of our products more difficult and more expensive, ultimately affecting our sales.

Also as a result of terrorism, the United States has been and may continue to be involved in armed conflicts that could have a further impact on our sales, our supply chain and our ability to deliver products to our customers. Political and economic instability in some regions of the world may also result and could negatively impact our business. The consequences of armed conflicts are unpredictable, and we may not be able to foresee events that could have a material adverse effect on us.

More generally, any of these events could cause consumer confidence and spending to decrease or result in increased volatility to the United States economy and worldwide financial markets. Any of these occurrences could have a material adverse effect on us, and also may result in the volatility of the market price for our securities and on the future prices of our securities.

*Manufacturing capacity constraints and manufacturing capacity utilization rates may adversely affect us.* There may be situations in which our manufacturing facilities are inadequate to meet the demand for certain of our products. Our inability to obtain sufficient manufacturing capacity to meet demand, either in our own facilities or through foundry or similar arrangements with others, could have a material adverse effect on us. If we do not complete the transition to 90-nanometer manufacturing process technology at Fab 30 on a timely basis, we may not be able to meet the demand for certain of our microprocessor products. In addition, if we do not complete the transition to manufacturing certain Spansion Flash memory products using 110-nanometer and more advanced manufacturing process technology on a timely basis, or otherwise increase capacity at our Flash memory manufacturing facilities, we may not be able to meet demand for these products from our customers. If we cannot meet demand for our products we could be materially adversely affected.

At times we may underutilize our manufacturing facilities as a result of reduced demand for certain of our products. We are substantially increasing our manufacturing capacity by building Fab 36, transitioning to smaller manufacturing process technologies and making significant capital investments in our existing manufacturing facilities. If the increase in

---

## [Table of Contents](#)

demand for our products is not consistent with our expectations, we may underutilize manufacturing facilities. This has in the past had, and in the future may have, a material adverse effect on us.

*Unless we maintain manufacturing efficiency, our future profitability could be materially adversely affected.* Manufacturing semiconductor components involves highly complex processes that require advanced equipment. We and our competitors continuously modify these processes in an effort to improve yields and product performance, and decrease costs. We are transitioning the production of certain of our microprocessor products to 90-nanometer process technology and the production of certain Flash memory products to 110-nanometer process technology. In addition we anticipate that we will begin to transition the production of certain Flash memory products to 90-nanometer process technology during late 2004. During periods when we are implementing new process technologies, manufacturing facilities may not be fully productive. Substantial delay in the technology transitions to smaller process technologies could have a material adverse effect on us, particularly if our competitors transition to more cost effective technologies earlier than we do. For example, Intel currently manufactures certain microprocessor products on 300-millimeter wafers using 90-nanometer process technology. Use of 90-nanometer technology can result in products that are higher performing, use less power and that cost less to manufacture. Use of 300-millimeter wafers can decrease manufacturing costs and increase capacity by yielding more equivalent chips per wafer than 200-millimeter wafers. We are currently transitioning to 90-nanometer process technology and we expect to transition to using 300-millimeter wafers in 2006. Furthermore, impurities or other difficulties in the manufacturing process can lower yields. Our manufacturing efficiency will be an important factor in our future profitability, and we cannot be sure that we will be able to maintain our manufacturing efficiency or increase manufacturing efficiency to the same extent as our competitors.

We may experience manufacturing problems in achieving acceptable yields or product delivery delays in the future as a result of, among other things, capacity constraints, construction delays, delays in meeting the milestones set forth in our joint development agreement with IBM, upgrading or expanding existing facilities, or changing our process technologies, which could result in a loss of future revenues. Our results of operations could also be adversely affected by the increase in fixed costs and operating expenses related to increases in production capacity if revenues do not increase proportionately.

---

## [Table of Contents](#)

*Intense competition in the integrated circuit industry could materially adversely affect us.* The integrated circuit industry is intensely competitive. Products compete on performance, quality, reliability, price, adherence to industry standards, software and hardware compatibility, marketing and distribution capability, brand recognition, and availability. After a product is introduced, costs and average selling prices normally decrease over time as production efficiency improves, competitors enter the market, and successive generations of products are developed and introduced for sale. Failure to reduce our costs on existing products or to develop and introduce, on a cost-effective and timely basis, new products or enhanced versions of existing products with higher margins, could have a material adverse effect on us.

*If our microprocessors are not compatible with some or all industry-standard software and hardware, we could be materially adversely affected.* Our microprocessors may not be fully compatible with some or all industry-standard software and hardware. Further, we may be unsuccessful in correcting any such compatibility problems in a timely manner. If our customers are unable to achieve compatibility with software or hardware after our products are shipped in volume, we could be materially adversely affected. In addition, the mere announcement of an incompatibility problem relating to our products could have a material adverse effect on us.

*Our debt instruments impose restrictions on us that may adversely affect our ability to operate our business.* Our July 2003 Loan Agreement, as amended, contains restrictive covenants and also requires us to maintain specified financial ratios and satisfy other financial condition tests when our net domestic cash is below specified amounts. Similarly, the guarantee associated with the Fab 36 Loan Agreements contains restrictive covenants and requires us to maintain specified financial ratios when group consolidated cash is below specified amounts. The Dresden Loan Agreements also impose restrictive covenants on AMD Saxony, including a restriction on its ability to pay dividends. The July 2003 FASL Term Loan, as amended, contains restrictive covenants, including a prohibition on Spansion LLC's ability to pay dividends and also requires Spansion LLC to maintain specified

---

## [Table of Contents](#)

financial ratios and satisfy other financial condition tests when its net domestic cash or its net worldwide cash is below specified amounts.

Our ability to satisfy the covenants, financial ratios and tests of our debt instruments, can be affected by events beyond our control. We cannot assure you that we will meet those requirements. A breach of any of these covenants, financial ratios or tests could result in a default under our July 2003 Loan Agreement, the July 2003 FASL Term Loan the Dresden Loan Agreements and/or Fab 36 Loan Agreements. In addition, these agreements contain cross-default provisions whereby a default under one agreement would likely result in cross-default under agreements covering other borrowings. For example, the occurrence of a default under the July 2003 FASL Term Loan would cause a cross-default under the July 2003 Loan Agreement and a default under the July 2003 Loan Agreement or under the indenture governing our 4.75% Debentures and our 4.50% Notes would cause a cross-default under the Dresden Loan Agreements. The occurrence of a default under any of these borrowing arrangements would permit the applicable lenders or note holders to declare all amounts outstanding under those borrowing arrangements to be immediately due and payable and would permit the lenders to terminate all commitments to extend further credit. If we were unable to repay those amounts, the lenders could proceed against the collateral granted to them to secure that indebtedness. We have granted a security interest in substantially all of our inventory and accounts receivable under our July 2003 Loan Agreement, and in certain property, plant and equipment under the July 2003 FASL Term Loan Agreement. AMD Saxony has pledged substantially all of its property as security under the Dresden Loan Agreements and AMD Fab 36 KG has pledged substantially all of its property as security under the Fab 36 Loan Agreements. If the lenders under any of the credit facilities or the note holders or the trustee under the indenture governing our 4.75% Debentures and our 4.50% Notes accelerate the repayment of borrowings, we cannot assure you that we will have sufficient assets to repay those borrowings and our other indebtedness.

*Costs related to defective products could have a material adverse effect on us.* One or more of our products may be found to be defective after the product has been shipped to customers in volume. The cost of a recall, software fix, product replacements and/or product returns may be substantial and could have a material adverse effect on us. In addition, modifications needed to fix the defect may impede performance of the product.

*If essential raw materials are not available to manufacture our products, we could be materially adversely affected.* Certain raw materials we use in the manufacture of our products are available from a limited number of suppliers. For example, we are dependent on key chemicals from a limited number of suppliers and rely on a few foreign companies to supply the majority of certain types of integrated circuit packages we purchase. Similarly, we purchase commercial non-Flash memory die, such as SRAM, from third party suppliers and incorporate these die into Spansion multi-chip package products. Interruption of supply or increased demand in the industry could cause shortages and price increases in various essential materials. If we are unable to procure certain of these materials, we may have to reduce our manufacturing operations. Such a reduction could have a material adverse effect on us.

---

## [Table of Contents](#)

*Our operations in foreign countries are subject to political and economic risks, which could have a material adverse effect on us.* Nearly all product assembly and final testing of our microprocessor products are performed at our manufacturing facilities in Malaysia and Singapore. Nearly all product assembly and final testing of Spansion products are performed at facilities in Malaysia, Thailand, and China. We manufacture our microprocessors in Germany. We also depend on foreign foundry suppliers for the production of our Personal Connectivity Solutions and chipset products, international joint ventures for the manufacture of optical photomasks that we intend to use in the manufacture of our microprocessors, and we have international sales operations.

The political and economic risks associated with our operations in foreign countries include, without limitation:

- expropriation;
- changes in a specific country's or region's political or economic conditions;
- trade protection measures and import or export licensing requirements;
- difficulty in protecting our intellectual property;
- changes in foreign currency exchange rates and currency controls;
- changes in freight and interest rates;
- disruption in air transportation between the United States and our overseas facilities; and
- loss or modification of exemptions for taxes and tariffs.

Any of the above risks, should they occur, could have a material adverse effect on us.

As part of our business strategy, we are continuing to seek expansion of product sales in emerging global markets. Expansion into emerging global markets presents similar political and economic risks as described above, and we may be unsuccessful in our strategy to penetrate these markets.

Also, a significant portion of the manufacturing costs for our microprocessor products is denominated in euros while sales of those products are denominated primarily in U.S. dollars. If the U.S. dollar continues to depreciate against the euro in the foreign exchange market, our gross margins may deteriorate.

*Our inability to continue to attract and retain key personnel may hinder our product development programs.* Our future success depends upon the continued service of numerous key engineering, manufacturing, marketing, sales and executive personnel. If we are not able to continue to attract, retain and motivate qualified personnel necessary for our business, the progress of our product development programs could be hindered, and we could be otherwise materially adversely affected.



---

## [Table of Contents](#)

*Our inability to effectively implement new modules of our enterprise resource planning system could have a material adverse effect on us.* We are in the process of implementing the sales and distribution modules of our enterprise resource planning (ERP) system. The ERP system is intended to provide an integrated information system to serve all of AMD. We are heavily dependent on the proper function of our internal systems to conduct our business. System failure or malfunctioning may result in disruption of operations and the inability to process transactions. If we encounter unforeseen problems with regard to system operations or these additional module implementations, we could be materially adversely affected.

*We rely on third parties to provide supply-chain logistics functions, including physical distribution of our products, and some information technology services.* We rely on a third-party provider to deliver our products to our customers and to distribute materials for our fabrication facilities. In addition, we rely on a third-party provider in India to provide certain information technology services to us, including helpdesk support, desktop application services, business and software support applications, server and storage administration, data center operations, database administration, and voice, video and remote access. Our relationships with these providers are governed by fixed term contracts. We cannot guarantee that these providers will fulfill their respective responsibilities in a timely manner in accordance with the contract terms, in which case our internal operations, the distribution of our products to our customers and the distribution of materials for our fabrication facilities could be materially adversely affected. Also, we cannot guarantee that our contracts with these third-party providers will be renewed, in which case we would have to transition these functions in-house or secure new providers, which could have a material adverse effect on us.

In addition, we decided to co-source these functions to third parties primarily to lower our operating expenses and create a more variable cost structure. However, if the costs related to administration, communication and coordination of these third-party providers are greater than we expect, then we will not realize our anticipated cost savings.

*Our operating results are subject to substantial seasonal fluctuations.* A substantial portion of our quarterly sales have been made in the last month of the quarter. This uneven sales pattern makes prediction of net sales for each financial period difficult and increases the risk of unanticipated variations in quarterly results and financial condition. In addition, our operating results tend to vary seasonally. For example, demand in the retail sector of the PC market is often stronger during the fourth quarter as a result of the winter holiday season. European sales are often weaker during the summer months. Many of the factors that create and affect seasonal trends are beyond our control.

*Uncertainties involving the ordering, and shipment of, and payment for our products could materially adversely affect us.* Sales of our products are typically made pursuant to individual purchase orders. We generally do not have long-term supply arrangements with our microprocessor customers. From time to time, we enter into long-term supply arrangements with our Flash memory customers. Generally, our customers may cancel orders 30 days prior to shipment without incurring a significant penalty. We base our inventory levels on customers' estimates of demand for their products, which is difficult to predict. This

---

## [Table of Contents](#)

difficulty may be compounded when we sell to OEMs indirectly through distributors, as our forecasts for demand are then based on estimates provided by multiple parties. In addition, our customers may change their inventory practices on short notice for any reason. The cancellation or deferral of product orders, the return of previously sold products or overproduction due to failure of anticipated orders to materialize could result in excess or obsolete inventory, which could result in write-downs of inventory. While we believe inventories in the supply chain are currently at reasonable levels, market conditions are uncertain and these and other factors could materially adversely affect us.

*Our price-protection obligations and return rights under specific provisions in our agreements with distributors may adversely affect us.* Distributors typically maintain an inventory of our products. In most instances, our agreements with distributors protect their inventory of our products against price reductions, as well as products that are slow moving or have been discontinued. These agreements, which may be canceled by either party on specified notice, generally allow for the return of our products. We defer the gross margins on our sales to distributors, resulting from both our deferral of revenue and related product costs, until the applicable products are re-sold by the distributors. The price protection and return rights we offer to our distributors could materially adversely affect us if distributors exercise these rights as a result of an unexpected significant decline in the price of our products or otherwise.

*Our inability to effectively control the sales of our products on the gray market could have a material adverse effect on us.* We market and sell our products directly to OEMs and through authorized third-party distributors. From time to time, our products are diverted from our authorized distribution channels and are sold on the “gray market.” Gray market products entering the market result in shadow inventory that is not visible to us, thus making it difficult to forecast demand accurately. Also, when gray market products enter the market, we and our channel compete with heavily discounted products, which adversely effects demand for our products. In addition, our inability to control gray marketing activities could result in customer satisfaction issues, because anytime products are purchased outside our authorized distribution channel, there is a risk that our customers are buying counterfeit or substandard products, including products that may have been altered in some way, or used products represented as new. Further, gray market products can be mishandled or damaged, which would cause additional customer satisfaction issues. Our inability to control sales of our products on the gray market could have a material adverse effect on us.

*If we cannot adequately protect our technology or other intellectual property in the United States and abroad, through patents, copyrights, trade secrets, trademarks and other measures, we may lose a competitive advantage and incur significant expenses.* We may not be able to adequately protect our technology or other intellectual property in the United States and abroad, through patents, copyrights, trade secrets, trademarks and other measures. Any patent licensed by us or issued to us could be challenged, invalidated or circumvented or rights granted thereunder may not provide a competitive advantage to us. Furthermore, patent applications that we file may not result in issuance of a patent. Despite our efforts to protect our rights, others may independently develop similar products, duplicate our products or

---

## [Table of Contents](#)

design around our patents and other rights. In addition, it is difficult to cost-effectively monitor compliance with, and enforce, our intellectual property on a worldwide basis.

From time to time, we have been notified that we may be infringing intellectual property rights of others. If any such claims are asserted against us, we may seek to obtain a license under the third party's intellectual property rights. We cannot assure you that all necessary licenses can be obtained on satisfactory terms, if at all. We could decide, in the alternative, to resort to litigation to challenge such claims. Such challenges could be extremely expensive and time-consuming and could have a material adverse effect on us. We cannot assure you that litigation related to the intellectual property rights of us and others will always be avoided or successfully concluded.

*Failure to comply with any applicable environmental regulations could result in a range of consequences, including fines, suspension of production, alteration of manufacturing process, sales limitations, and criminal and civil liabilities.* Existing or future regulations could require us to procure expensive pollution abatement or remediation equipment, to modify product designs or to incur other expenses associated with compliance with environmental regulations. Any failure to control the use of, disposal or storage of, or adequately restrict the discharge of, hazardous substances could subject us to future liabilities and could have a material adverse effect on us.

*Future litigation proceedings may materially affect us.* From time to time we are a defendant or plaintiff in various legal actions. Litigation can involve complex factual and legal questions and its outcome is uncertain. Any claim that is successfully asserted against us may cause us to pay substantial damages. In addition, future litigation may result in injunctions against future product sales. Even if we were to prevail, any litigation could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations, which could have a material adverse effect on us.

*Our corporate headquarters in California and manufacturing facilities in Japan are located in earthquake zones and these operations could be interrupted in the event of an earthquake.* Our corporate headquarters are located near major earthquake fault lines in California and the wafer fabrication facilities for Spansion Flash memory products are located near major earthquake fault lines in Japan. In the event of a major earthquake, we could experience business interruptions, destruction of facilities and/or loss of life, all of which could materially adversely affect us.

---

[Table of Contents](#)

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Reference is made to Part II, Item 7A, Quantitative and Qualitative Disclosures about Market Risk, in our Annual Report on Form 10-K for the fiscal year ended December 28, 2003. We experienced no significant changes in market risk during the first six months of 2004. However, we cannot give any assurance as to the effect that future changes in foreign currency rates will have on our consolidated financial position, results of operations or cash flows.

**ITEM 4. CONTROLS AND PROCEDURES**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As of June 27, 2004, the end of the quarter covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

There has been no change in our internal controls over financial reporting during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

[Table of Contents](#)

**PART II. OTHER INFORMATION**

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

AMD's annual meeting of stockholders was held on April 29, 2004. The following are the results of the voting on the proposals submitted to stockholders at the annual meeting

Proposal No. 1: Election of Directors. The following individuals were elected as directors:

| <u>Name</u>          | <u>For</u>  | <u>Withheld</u> |
|----------------------|-------------|-----------------|
| W. J. Sanders III    | 293,288,200 | 10,087,070      |
| Hector de J. Ruiz    | 292,956,393 | 10,418,877      |
| W. Michael Barnes    | 293,559,781 | 9,815,489       |
| Charles M. Blalack   | 283,180,347 | 20,194,923      |
| R. Gene Brown        | 283,257,624 | 20,117,646      |
| Bruce L. Clafin      | 292,663,466 | 10,711,804      |
| H. Paulett Eberhart  | 294,525,780 | 8,849,490       |
| Robert B. Palmer     | 284,263,474 | 19,111,796      |
| Leonard M. Silverman | 285,229,398 | 18,145,872      |

Proposal No. 2: The proposal to ratify the appointment of Ernst & Young LLP as independent auditors for the current fiscal year was approved.

For: 298,927,161  
Against: 2,762,409  
Abstain: 1,685,699

Proposal No. 3: The proposal to approve the 2004 Equity Incentive Plan was approved.

For: 109,675,988  
Against: 64,137,098  
Abstain: 3,641,036  
Broker non-vote: 125,921,148

**ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

(a) Exhibits

10.39(a-2) Second Amendment to Amended and Restated Loan and Security Agreement dated April 19, 2004, by and among Advanced Micro Devices, Inc., AMD International Sales and Service Ltd., the several financial institutions party thereto as Lenders, Bank of America, N.A., as administrative agent and a Lender, Congress Financial Corporation as syndication agent, The CIT Group/Business Credit, Inc. as documentation agent and a Lender, and Wells Fargo Foothill, LLC, as collateral agent and a Lender.

## Table of Contents

- 10.48(a-1) First Amendment to Amended and Restated Term Loan Agreement dated as of March 29, 2004, by and among FASL LLC, General Electric Capital Corporation and the Majority Lenders party thereto.
- \*\*\*10.61 EUR 700,000,000 Term Loan Facility Agreement dated April 21, 2004, between AMD Fab 36 Limited Liability Company & Co. KG, ABN AMRO Bank N.V., Commerzbank Aktiengesellschaft, Deutsche Bank Luxembourg S.A., Dresdner Kleinwort Wasserstein, the investment banking division of Dresdner Bank AG, Landesbank Hessen-Thüringen, Girozentrale, Landesbank Sachsen Girozentrale, Dresdner Bank Luxembourg S.A., Dresdner Bank AG and the financial institutions specified in Schedule 1.
- 10.62 Subordination Agreement dated April 20, 2004, between AMD, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, Leipziger Messe GmbH, Fab 36 Beteiligungs GmbH, AMD Fab 36 LLC and LM Beteiligungsgesellschaft mbH, AMD Fab 36 Limited Liability Company & Co. KG, ABN AMRO Bank N.V., Commerzbank Aktiengesellschaft, Deutsche Bank Luxembourg S.A., Dresdner Kleinwort Wasserstein, KFW, Landesbank Hessen-Thüringen, Girozentrale and Landesbank Sachsen Girozentrale, as Mandated Lead Arrangers, Dresdner Bank Luxembourg S.A., as Facility Agent, with Dresdner Bank AG as Security Agent, and the financial institutions specified therein.
- 10.63 Guarantee Agreement dated April 21, 2004, between AMD, AMD Fab 36 Limited Liability Company & Co. KG, Dresdner Bank AG and Dresdner Bank Luxembourg S.A.
- 10.64 License Agreement dated April 21, 2004, between AMD, AMD Fab 36 Holding GmbH and AMD Fab 36 Limited Liability Company & Co. KG.
- \*\*\*10.65 Limited Partnership Agreement of AMD Fab 36 Limited Liability Company & Co. KG dated April 21, 2004, by and between AMD Fab 36 LLC, LM Beteiligungsgesellschaft mbH, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, Leipziger Messe GmbH, and Fab 36 Beteiligungs GmbH.
- \*\*\*10.66 Agreement on the Formation of a Silent Partnership dated April 21, 2004, by and between AMD Fab 36 Limited Liability Company & Co. KG, Leipziger Messe GmbH, and Fab 36 Beteiligungs GmbH.
- 10.67 Agreement of Purchase and Sale of Limited Partner's Interests dated April 21, 2004, by and between Leipziger Messe GmbH, Fab 36 Beteiligungs GmbH, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, and AMD.
- 10.68 Agreement of Purchase and Sale of Silent Partner's Interests dated April 21, 2004, by and between AMD, Leipziger Messe GmbH, Fab 36 Beteiligungs GmbH, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, and AMD Fab 36 Limited Liability Company & Co. KG.
- 10.69 AMD Fab 36 Holding Cost Plus Reimbursement Agreement dated April 21, 2004, between AMD Fab 36 Holding GmbH and AMD.
- 10.70 AMD Fab 36 Cost Plus Reimbursement Agreement dated April 21, 2004, between AMD Fab 36 Holding GmbH and AMD Fab 36 Limited Liability Company & Co. KG.
- 10.71 Management Service Agreement dated October 31, 2003, between AMD Saxony Limited Liability Company & Co. KG, SI Investment Limited Liability Company & Co. KG, SI Investment Holding GmbH and AMD.

---

[Table of Contents](#)

- 10.72 Buy-In Agreement dated October 31, 2003, by and between AMD and SI Investment Limited Liability Company & Co. KG.
- 10.73 Revolving Credit Agreement dated April 21, 2004, among AMD, AMD Fab 36 Holding GmbH, and AMD Fab 36 Limited Liability Company & Co. KG.
- 31.1 Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

---

\*\*\* Confidential treatment has been requested as to certain portions of this Exhibit.

(b) Reports on Form 8-K

Current Report on Form 8-K dated April 26, 2004, reporting under Item 5 – Other Events was filed announcing the signing of a EUR 700,000,000 term loan facility agreement and other related agreements for AMD Fab 36 Limited Liability Company & Co. KG.

**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 5, 2004

ADVANCED MICRO DEVICES, INC.

By: /s/ ROBERT J. RIVET

---

Robert J. Rivet  
Executive Vice President and  
Chief Financial Officer

Signing on behalf of the registrant and as the principal accounting officer



## SECOND AMENDMENT TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

This SECOND AMENDMENT TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Amendment") is entered into as of April 19, 2004, by and among ADVANCED MICRO DEVICES, INC., a Delaware corporation ("Parent"), AMD INTERNATIONAL SALES & SERVICE, LTD., a Delaware corporation ("AMDISS") (Parent and AMDISS, individually and collectively, the "Borrower"), the several financial institutions party hereto as Lenders (each a "Lender" and, collectively, the "Lenders"), BANK OF AMERICA, N.A., as administrative agent for the Lenders (in such capacity, the "Agent") and as a Lender, CONGRESS FINANCIAL CORPORATION (SOUTHWEST), as syndication agent for the Lenders (in its capacity as such, the "Syndication Agent") and as a Lender, THE CIT GROUP/BUSINESS CREDIT, INC., as documentation agent for the Lenders (in its capacity as such, the "Documentation Agent") and as a Lender, and WELLS FARGO FOOTHILL, LLC, as collateral agent for the Lenders (in its capacity as such, the "Collateral Agent") and as a Lender.

WHEREAS, the Borrower, certain of the Lenders and the Agent entered into that certain Amended and Restated Loan and Security Agreement, dated as of July 7, 2003, as amended by that certain First Amendment to Amended and Restated Loan and Security Agreement, dated as of October 3, 2003 (as amended and as may be further amended from time to time, the "Loan Agreement"); and

WHEREAS, the Borrower has requested that certain additional German subsidiaries be added to the definition of "German Subsidiary" under the Loan Agreement, and Majority Lenders have agreed to such request, subject to the terms and conditions of this Amendment.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions; References; Interpretation.

(a) Unless otherwise specifically defined herein, each capitalized term used herein (including in the Recitals hereof) which is defined in the Loan Agreement shall have the meaning assigned to such term in the Loan Agreement.

(b) Each reference to "this Amendment," "hereof," "hereunder," "herein" and "hereby" and each other similar reference contained in the Loan Agreement, and each reference to "the Loan Agreement" and each other similar reference in the other Loan Documents, shall from and after the Effective Date (defined below) refer to the Loan Agreement as amended hereby.

(c) The rules of interpretation set forth in Section 1.3 of the Loan Agreement shall be applicable to this Amendment.

2. Amendments to Loan Agreement. Subject to the terms and conditions hereof, the Loan Agreement is amended as follows, effective as of the Effective Date:

(a) Section 1.1 of the Loan Agreement is hereby amended as follows:

(i) The defined term "Borrowing Base" is hereby amended and restated in its entirety as follows:

"Borrowing Base" means, at any time, an amount equal to (a) the lesser of (i) the Maximum Revolver Amount or (ii) the sum of (A) eighty-five percent (85%) of the Net Amount of Eligible Accounts of the Parent and AMDISS payable by original equipment manufacturers plus (B) fifty percent (50%) of the Net Amount of Eligible Accounts of the Parent and AMDISS payable by distributors (such Accounts, the "Distributor Accounts") plus (C) the lesser of (1) \$25,000,000 and (2) fifty percent (50%) of the Net Amount of Eligible Other Foreign Accounts of AMDISS; provided, however, that if at any time either (i) the average daily cash balance of Net Domestic Cash during any 30 day period or (ii) Net Domestic Cash as of the last day of any month is less than \$175,000,000 (a "Reduction Event") then the Dollar and percentage amounts set forth above in this clause (C) shall be promptly reduced to zero (if after a Reduction Event, either (i) the average daily cash balance of Net Domestic Cash during any 30 day period or (ii) Net Domestic Cash as of the last day of any month is greater than \$175,000,000 as reported on 2 consecutive Weekly Domestic Cash Reports then the Dollar and percentage amounts shall be restored to the amounts first set forth above in this clause (C)) plus (D) ninety percent (90%) of Domestic Cash; minus (b) the sum of (i) reserves for accrued interest on the Obligations, (ii) the Bank Product Reserve, if any, and (iii) the Dilution Reserves and other reserves which the Agent deems necessary in the exercise of its reasonable commercial discretion to maintain with respect to the Borrower's account, including reserves for any amounts which the Agent or any Lender may be obligated to pay in the future for the account of the Borrower.

(ii) The defined term "Dresden Agreements" is hereby amended and restated in its entirety as follows:

"Dresden Agreements" means (i) that certain Syndicated Loan Agreement, dated as of March 11, 1997, among AMD Saxony Manufacturing GmbH, as Borrower, Dresdner Bank Luxembourg S.A., as Agent and Paying Agent, Dresdner Bank AG, as Security Agent, and the lenders party thereto, as amended on February 6, 1998, June 29, 1999, February 20, 2001, June 3, 2002, and December 20, 2002 (as so amended, and as further amended from time to time, the "Dresden Loan Agreement") and (ii) each of the other "Operative Documents" (as defined in the Sponsors' Support Agreement (as defined in the Dresden Loan Agreement), as amended on February 6, 1998, June 29, 1999, February 20, 2001, June 3, 2002 and December 20, 2002 and as further amended from time to time, to the extent executed and delivered pursuant to or in connection with the Sponsors' Support Agreement or the Dresden Loan Agreement.

(iii) The defined term "German Subsidiary" is hereby amended and restated in its entirety as follows:

"German Subsidiary," means, collectively, the Old German Subsidiaries and the New German Subsidiaries.

(iv) The defined term "Revolving Intercompany Loan" is hereby amended and restated in its entirety as follows:

"Revolving Intercompany Loan" has the meaning specified in clause (h)(ii) of the definition of Restricted Investment.

(v) The following defined terms are hereby added in the appropriate alphabetic order:

"Fab 36 Facility Agreement" means that certain Facility Agreement to be entered into on or about April 21, 2004, among AMD Fab 36 Limited Liability Company & Co. KG, as borrower, Dresdner Bank Luxembourg S.A., as Facility Agent and Dresdner Bank AG, as Security Agent, and the lenders party thereto, as amended, supplemented, restated or otherwise modified from time to time.

"Fab 36 Agreements" means (i) the Fab 36 Facility Agreement and (ii) each of the other "Transaction Documents" (as defined in the Fab 36 Facility Agreement), in each case as amended, supplemented, restated or otherwise modified from time to time, to the extent executed and delivered pursuant to or in connection with the Fab 36 Facility Agreement.

"Old German Subsidiaries" means AMD Saxony Manufacturing GmbH, a German corporation (or following its conversion to a limited partnership, AMD Saxony LLC & Co. KG), and AMD Saxony Holding GmbH, AMD Saxony Admin GmbH and AMD Saxony LLC, which entities were formed for the purpose of holding collectively, directly or indirectly, 100% of the equity (whether capital stock or, following the conversion to a limited partnership, partnership interests) in AMD Saxony Manufacturing GmbH.

"New German Subsidiaries" means AMD Fab 36 Limited Liability Company & Co. KG, a German limited partnership, and AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, and AMD Fab 36 LLC, which entities were formed for the purpose of holding collectively, directly or indirectly, a majority of the equity of AMD Fab 36 Limited Liability Company & Co. KG.

"New Revolving Intercompany Loans" has the meaning specified in clause (h)(iv) of the definition of Restricted Investment.

(vi) Clause (h) of the defined term "Restricted Investment" is hereby amended and restated in its entirety as follows:

(h) (i) Investments (excluding Investments consisting of the Revolving Intercompany Loan described in clause (h)(ii)) in the Old German Subsidiaries which were (x) in effect as of the Closing Date, and (y) have an aggregate outstanding balance

not greater than 300,000,000 Euros, and (ii) Investments in the Old German Subsidiaries consisting of a revolving intercompany loan made by the Parent or wholly-owned Subsidiary thereof, as lender, to the Old German Subsidiaries, as borrower, in an aggregate principal amount not to exceed \$750,000,000 at any time outstanding, which loan shall be evidenced by documentation in form and substance reasonably satisfactory to the Agent and the Majority Lenders and the proceeds of which shall be used by the Old German Subsidiaries for general corporate purposes, including, without limitation, working capital, cash expenses and other cash requirements and Project Costs (as defined in the Dresden Agreements) (such revolving intercompany loan, the “Revolving Intercompany Loan”), (iii) Investments (excluding Investments consisting of the New Revolving Intercompany Loan described in clause (h)(iv)) in the New German Subsidiaries pursuant to the AMD Fab 36 Agreements in an aggregate amount not greater than 1,000,000,000 Euros, (iv) Investments in the New German Subsidiaries consisting of a revolving intercompany loan made by the Parent or wholly-owned Subsidiary thereof, as lender, to the New German Subsidiaries, as borrower, in an aggregate principal amount not to exceed 750,000,000 Euros at any time outstanding, which loan shall be evidenced by documentation in form and substance reasonably satisfactory to the Agent and Majority Lenders and the proceeds of which shall be used by the New German Subsidiaries for general corporate purposes, including, without limitation, working capital, cash expenses and other cash requirements, capital expenditures and costs related to the Project (as defined in the Fab 36 Agreements) (such revolving intercompany loan, the “New Revolving Intercompany Loan”), and (v) Investments in the New German subsidiaries to the extent required to avoid adverse tax consequences pursuant to the “thin-capitalization rules” adopted under applicable German laws;

(b) Subsection 6.1(a)(ii) is hereby amended and restated in its entirety as follows:

(ii) any Accounts payable to the Parent by any German Subsidiary (such Accounts, the “German Subsidiary Accounts”) or any General Intangibles or chattel paper, documents or instruments evidencing any rights to payment or other obligations of any German Subsidiary to the Parent, including the Dresden Agreements or the Fab 36 Agreements, and any proceeds thereof;

(c) Subsection 6.1 is hereby amended by inserting a new clause (c) as follows:

(c) Notwithstanding the foregoing provisions of this Section 6.1, the grant of a security interest pursuant to this Section 6.1 shall not extend to, and the term “Collateral” shall not include, any capital stock, partnership interest, membership interest or other equity interest in any German Subsidiary.

(d) Section 6.7 of the Loan Agreement is hereby amended and restated in its entirety as follows:

6.7 Collateral Reporting. The Borrower shall provide the Agent with the following documents at the following times in form satisfactory to the Agent: (a) on a monthly basis (within twenty-five (25) days after the end of each month), at any time

prior to the first date, if any, on which either (i) the Loan to Availability Ratio is equal to or greater than 40% for five (5) consecutive Business Days or (ii) Availability as of the close of Agent's business is less than \$50,000,000 (either of such dates, a "Trigger Date"), and on a weekly basis (within three (3) Business Days after the end of each week), thereafter, a schedule of the Borrower's Accounts created since the last such schedule, which schedule shall also identify any collections, credits and other adjustments in respect of the Borrower's Accounts since the last such schedule, and a Borrowing Base Certificate; provided, however, that if after any Trigger Date the Loan to Availability Ratio is less than 40% for 120 consecutive days (such 120th day, a "Shut-Off Date") then, from and after such Shut-Off Date, the Agent and the Lenders agree that the Borrower shall only be required to deliver each such schedule of Borrower's Accounts and each such Borrowing Base Certificate on a monthly basis until the next Trigger Date, if any, and on a weekly basis thereafter until the next Shut-Off Date, if any (the parties agree that the immediately preceding proviso shall govern the required frequency of the Borrower's delivery of schedules of Borrower's Accounts and Borrowing Base Certificates pursuant to this Section 6.7 in respect of each subsequent Trigger Date and Shut-Off Date occurring thereafter); and provided, further, however, that during each period commencing on the date that the outstanding balance of Revolving Loans is \$0, and no Default or Event of Default then exists, Agent and the Lenders agree that the Borrower shall not be required to deliver any such schedule of Borrower's Accounts or such Borrowing Base Certificate until the next date on which either a Default or Event of Default has occurred or Borrower makes a request for a Revolving Loan; (b) on a monthly basis, (i) within seven (7) Business Days after the end of each month, an aging of the Borrower's Accounts, together with a reconciliation to the previous month's or week's, as the case may be, aging of the Borrower's Accounts and to the Borrower's general ledger; (ii) within ten (10) Business Days after the end of each month, an aging of the Borrower's accounts payable; and (iii) within ten (10) Business Days after the end of each month, Inventory reports by category, with additional detail showing additions to and deletions from the Inventory; provided, however, that during each period commencing on the date that the outstanding balance of Revolving Loans is \$0, and no Default or Event of Default then exists, Agent and the Lenders agree that the Borrower shall not be required to deliver any such agings of the Borrower's Accounts and accounts payable or such Inventory reports until the next date on which either a Default or Event of Default has occurred or Borrower makes a request for a Revolving Loan; (c) on a weekly basis, on Tuesday of each week, a calculation of the average daily cash balance of Net Domestic Cash for the prior week substantially in the form of Exhibit 6.7(b)(iv) attached hereto (the "Weekly Domestic Cash Report"); (d) upon request, copies of invoices in connection with the Accounts, customer statements, credit memos, remittance advices and reports, deposit slips, shipping and delivery documents in connection with the Borrower's Accounts and for Inventory and Equipment acquired by the Borrower, purchase orders and invoices; (e) upon request, a statement of the balance of each of the Intercompany Accounts; (f) such other reports as to the Collateral as the Agent shall reasonably request from time to time; and (g) with the delivery of each of the foregoing, a certificate of the Borrower executed by an officer thereof certifying as to the accuracy and completeness of the foregoing. If any of the Borrower's records or reports of the Collateral are prepared by an accounting service or other agent, the Borrower hereby authorizes such service or agent to deliver such records, reports, and related documents to the Agent, for distribution to the Lenders.

(e) Subsection 9.11(v) of the Loan Agreement is hereby amended as follows:

(v) (x) Guaranties by the Parent of the obligations of the Old German Subsidiaries under the Dresden Agreements (and payment of such Guaranties) in an amount not to exceed 306,775,130 Euros in the aggregate, and (y) Guaranties by the Parent of the obligations of the New German Subsidiaries (and payment of such Guaranties) (i) with respect to the Guaranty Agreement dated on or about April 21, 2004 among the Parent, as guarantor, AMD Fab 36 Limited Liability Company & Co. KG, as borrower, Dresdner Bank Luxembourg S.A., as Facility Agent and Dresdner Bank AG, as Security Agent, and (ii) with respect to the other Fab 36 Agreements, in an amount not to exceed 1,000,000,000 Euros in the aggregate;

(f) Subsection 9.14 of the Loan Agreement is hereby amended as follows:

Except as set forth below, neither the Borrower nor any of its Restricted Subsidiaries shall sell, transfer, distribute, or pay any money or property, including, but not limited to, any fees or expenses of any nature (including, but not limited to, any fees or expenses for management services), to any Affiliate, or lend or advance money or property to any Affiliate, or invest in (by capital contribution or otherwise) or purchase or repurchase any stock or indebtedness, or any property, of any Affiliate, or become liable on any Guaranty of the indebtedness, dividends, or other obligations of any Affiliate. Notwithstanding the foregoing provisions of this Section 9.14, the Borrower and its Restricted Subsidiaries may (i) (x) execute, deliver and perform its obligations under, and consummate the transactions contemplated by, the Dresden Agreements, including without limitation the Revolving Intercompany Loans permitted hereunder, and (y) execute, deliver and perform its obligations under, and consummate the transactions contemplated by, the Fab 36 Agreements, including without limitation the New Revolving Intercompany Loans permitted hereunder, (ii) execute, deliver and perform its obligations under, and consummate the transactions contemplated by, the Mask House Agreements, (iii) execute, deliver and perform its obligations under, and consummate the transactions contemplated by, the FASL (Delaware) Organizational Documents, (iv) engage in other transactions with Affiliates, including the Permitted Affiliate Investments, provided that the terms of any such transactions described in this subsection (iv) shall be materially no less favorable to the Borrower and its Restricted Subsidiaries than would be obtained in a comparable arms' length transaction with a third party who is not an Affiliate. The Borrower shall fully disclose to the Agent and the Lenders the amounts and terms of any such Affiliate transaction involving consideration in excess of \$5,000,000. The parties acknowledge that the Borrower and its Restricted Subsidiaries from time to time engage in transfers among each other of inventory and equipment on an arms-length basis in the ordinary course of business, and no further disclosure is required under this Section 9.14 in that regard. Without limiting the operation of the foregoing provisions of this Section 9.14, the parties further acknowledge that (a) (x) pursuant to the Dresden Agreements (copies of which have been provided to the Agent), the Borrower engages and will engage in transactions with the Old German Subsidiaries,

including support in the form of loans and guarantees, the purchase of wafers and research, design and development services (and the license of certain intellectual property rights to the Old German Subsidiaries in connection therewith), the provision of management services to the Old German Subsidiaries, and foreign exchange swap transactions, (y) pursuant to the Fab 36 Agreements (copies of which have been provided to the Agent), the Borrower engages and will engage in transactions with the New German Subsidiaries, including support in the form of capital commitments, loans and guarantees, the purchase of wafers (and the license of certain intellectual property rights to the New German Subsidiaries in connection therewith), the provision of management services to the New German Subsidiaries, and foreign exchange or interest swap transactions or other hedge transactions, (b) pursuant to the Sales and Purchase Agreement of FASL (Japan) Products among the Parent, Fujitsu Limited and FASL (Japan) dated as of September 8, 1995, as amended, and related agreements (the "FASL (Japan) Agreement") (copies of which have been provided to the Agent), the Borrower engages and will engage in transactions with FASL (Japan) for the purchase of wafers and the joint development of technology, and certain joint licenses and cross licenses and other agreements in connection therewith, and (c) pursuant to the FASL (Delaware) Organizational Documents, the Borrower engages and will engage in transactions with FASL (Delaware), and, in the case of clauses (a) and (b) above, no further disclosure is required under this Section 9.14 in that regard, and in the case of clause (c), no further disclosure is required under this Section 9.14 in that regard provided that an Enhanced Covenant Period does not exist.

3. Representations and Warranties. The Borrower hereby represents and warrants to the Agent and the Lenders as follows:

(a) No Default or Event of Default has occurred and is continuing (or would result from the amendment of the Loan Agreement contemplated hereby).

(b) The execution, delivery and performance by the Borrower of this Amendment and the Loan Agreement (as amended by this Amendment) have been duly authorized by all necessary corporate and other action and do not and will not require any registration with, consent or approval of, or notice to or action by, any Person (including any Governmental Authority) in order to be effective and enforceable.

(c) This Amendment and the Loan Agreement (as amended by this Amendment) constitute the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms.

(d) All representations and warranties of the Borrower contained in the Loan Agreement are true and correct in all material respects as of the date hereof (except to the extent such representations and warranties expressly refer to an earlier date, in which case they shall be true and correct as of such earlier date).

(e) The Borrower is entering into this Amendment on the basis of its own investigation and for its own reasons, without reliance upon the Agent and the Lenders or any other Person.

(f) The Borrower's obligations under the Loan Agreement and under the other Loan Documents are not subject to any defense, counterclaim, set-off, right of recoupment, abatement or other claim.

4. Conditions of Effectiveness.

(a) This Amendment shall be effective as of the date hereof (the "Effective Date"); provided, that, the Agent shall have received (i) from the Borrower and each Lender, a duly executed original (or, if elected by the Agent, an executed facsimile copy) of this Amendment and (ii) from the Borrower, payment of all reasonable Attorney Costs of the Agent to the extent invoiced on or prior to April \_\_, 2004 (including any previously invoiced and outstanding Attorney Costs that relate to services previously provided).

(b) From and after the Effective Date, the Loan Agreement is amended as set forth herein. Except as expressly amended pursuant hereto, the Loan Agreement shall remain unchanged and in full force and effect and is hereby ratified and confirmed in all respects. Without limiting the generality of the foregoing, the Borrower hereby ratifies and affirms that the Liens granted to the Agent for the benefit of the Lenders under the Loan Agreement constitute valid and perfected first priority Liens on the Collateral (subject only to Permitted Liens) and secure the Obligations.

(c) The Agent will notify the Borrower and the Lenders of the occurrence of the Effective Date.

5. Acknowledgement of Priority of Bank's Lien. The Agent, the Lenders and the Borrower agree and acknowledge that (i) the Bank's Liens on cash collateral and cash equivalents permitted under clause (I) of the definition of "Permitted Liens" shall be senior to the Agent's Liens on such cash collateral and cash equivalents and (ii) such Lien priority of the Bank's Liens on cash collateral and cash equivalents permitted under clause (I) of the definition of "Permitted Liens" shall not constitute a Default or an Event of Default under the Loan Agreement or any other Loan Document to the extent that the Loan Agreement or any other Loan Document requires that the Agent's Liens on the Collateral be of first priority, and, accordingly, any relevant representations, warranties, covenants or conditions shall be deemed amended to exempt the cash collateral and cash equivalents that is subject to the Bank's Liens permitted under clause (I) of the definition of "Permitted Liens" from the general requirement that the Agent's Liens on the Collateral be of first priority.

6. Miscellaneous.

(a) The Borrower acknowledges and agrees that the execution and delivery by the Agent and the Lenders of this Amendment shall not be deemed to create a course of dealing or an obligation to execute similar waivers or amendments under the same or similar circumstances in the future.

(b) This Amendment shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns.



---

(c) This Amendment shall be governed by and construed in accordance with the law of the State of California; provided, that, the Agent and the Lenders shall retain all rights arising under Federal law.

(d) This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Each of the parties hereto understands and agrees that this document (and any other document required herein) may be delivered by any party thereto either in the form of an executed original or an executed original sent by facsimile transmission to be followed promptly by mailing of a hard copy original, and that receipt by the Agent of a facsimile transmitted document purportedly bearing the signature of a Lender or the Borrower shall bind such Lender or the Borrower, respectively, with the same force and effect as the delivery of a hard copy original. Any failure by the Agent to receive the hard copy executed original of such document shall not diminish the binding effect of receipt of the facsimile transmitted executed original of such document of the party whose hard copy page was not received by the Agent.

(e) This Amendment contains the entire and exclusive agreement of the parties hereto with reference to the matters discussed herein. This Amendment supersedes all prior drafts and communications with respect hereto. This Amendment may not be amended except in accordance with the provisions of Section 13.2 of the Loan Agreement.

(f) If any term or provision of this Amendment shall be deemed prohibited by or invalid under any applicable law, such provision shall be invalidated without affecting the remaining provisions of this Amendment, the Loan Agreement or the Loan Documents.

(g) The Borrower agrees to pay or reimburse Bank of America, N.A. (including in its capacity as Agent), upon demand, for all reasonable costs and expenses (including reasonable Attorney Costs) incurred by Bank of America, N.A. (including in its capacity as Agent) in connection with the development, preparation, negotiation, execution and delivery of this Amendment.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered in San Francisco, California, by their proper and duly authorized officers as of the day and year first above written.

ADVANCED MICRO DEVICES, INC.,  
a Delaware corporation

By: /s/ Robert J. Rivet

Name: Robert J. Rivet  
Title: Senior Vice President, Chief Financial Officer

AMD INTERNATIONAL SALES & SERVICE, LTD.,  
a Delaware corporation

By: /s/ Hollis O'Brien

Name: Hollis O'Brien  
Title: Secretary

Commitment: \$34,000,000  
Pro Rata Share: 27.2%

BANK OF AMERICA, N.A.,  
as Agent and as a Lender

By:           /s/ John MacNamara          

Name: John MacNamara  
Title: Vice President

Commitment: \$25,000,000  
Pro Rata Share: 20%

WELLS FARGO FOOTHILL, LLC,  
as Collateral Agent and as a Lender

By:           /s/ Brad Engel          

Name: Brad Engel  
Title: Assistant Vice President

Commitment: \$33,000,000  
Pro Rata Share: 26.4%

---

CONGRESS FINANCIAL CORPORATION  
(SOUTHWEST),  
as Syndication Agent and as a Lender

By: /s/ Joe T. Curdy

---

Name: Joe T. Curdy  
Title: Vice President

Commitment: \$33,000,000  
Pro Rata Share: 26.4%

THE CIT GROUP/BUSINESS CREDIT, INC.,  
as Documentation Agent and as a Lender

By:           /s/ Thomas H. Hopkins

Name: Thomas H. Hopkins  
Title: Vice President

**FIRST AMENDMENT TO AMENDED AND RESTATED TERM LOAN AGREEMENT**

This FIRST AMENDMENT TO AMENDED AND RESTATED TERM LOAN AGREEMENT, dated as of March 29, 2004 (this "Amendment"), is entered into by and among FASL LLC, a Delaware limited liability company (the "Borrower"), GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation, as agent for itself and the lenders from time to time signatory to the Loan Agreement (as defined below), as hereinafter defined (the "Lenders") (in its capacity as agent for itself and the Lenders, together with its successors or affiliates in such capacity, the "Agent"), and the Majority Lenders party hereto.

**WHEREAS**, the Borrower has entered into the Amended and Restated Term Loan Agreement, dated as of July 11, 2003 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"), by and among the Borrower, the Lenders and the Agent.

**WHEREAS**, the Borrower seeks to amend certain provisions of the Loan Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions; Rules of Interpretation. Capitalized terms used herein shall have the meanings assigned to them in the Loan Agreement, unless otherwise defined herein.

Section 2. Amendments. The Loan Agreement is hereby amended as follows:

(a) Section 1.1 of the Loan Agreement is hereby amended by deleting the definition of "Target Cash Level" in its entirety and replacing such definition with the following:

"Target Cash Level" means, for any period, the applicable cash level set forth below for such period:

| <u>Period</u>                                      | <u>Amount</u>  |
|--|----------------|
| Third quarter of Fiscal Year 2003                  | \$ 130,000,000 |
| Fourth quarter of Fiscal Year 2003                 | \$ 130,000,000 |
| Each fiscal quarter of each Fiscal Year thereafter | \$ 60,000,000  |

(b) Section 1.1 of the Loan Agreement is hereby amended by adding the following definitions in the correct alphabetical order thereof:

“Net Worldwide Cash” means, at any time, Worldwide Cash at such time minus restricted cash (determined in accordance with GAAP) (or any refinancing, renewal or extension thereof permitted under Section 9.12) at such time.

“Target Worldwide Cash Level” means, \$130,000,000 for each fiscal quarter of each Fiscal Year.

“Worldwide Cash” means, as of any date of determination, the amount on such date of all cash, cash equivalents and short-term investments (each determined in accordance with GAAP) of the Borrower and its Subsidiaries on deposit or otherwise on such date, which cash and cash equivalents are not subject to any Liens (excluding Liens permitted under clause (h) of the definition of “Permitted Liens”).

(c) The definition of “Enhanced Covenant Period” in Section 1.1 of the Loan Agreement is hereby amended and restated as follows:

“Enhanced Covenant Period” means, for each fiscal quarter of each Fiscal Year, at any time (a) Net Domestic Cash is less than the Target Cash Level or (b) Net Worldwide Cash is less than the Target Worldwide Cash Level as clause (a) and (b) are measured on the last day of the prior fiscal quarter.

(d) Section 7.2 of the Credit Agreement is hereby amended by deleting clause (l) and inserting the following new clause (l) and clause (m):

(l) As soon as available, but in any event no later than forty-five (45) days after the end of each fiscal quarter of each Fiscal Year, a report in electronic form of

(i) all Dispositions and the Net Proceeds received or estimated to be received from each such Disposition in such fiscal quarter and for the period from the beginning of the Fiscal Year to the end of such fiscal quarter and (ii) if known at the time such report is submitted, how such Net Proceeds have been or shall be reinvested or otherwise applied, with both clause (i) and (ii) in reasonable detail and in form and substance satisfactory to the Agent.

(m) Such additional information as the Agent and/or any Lender may from time to time reasonably request regarding the financial and business affairs of the Borrower or any Restricted Subsidiary.

(e) Section 9.19 of the Credit Agreement is amended and restated in its entirety as follows:

9.19 Adjusted Tangible Net Worth. At any time that (a) Net Domestic Cash is less than the Target Cash Level or (b) Net Worldwide Cash is less than the Target Worldwide Cash Level, the Borrower will maintain Adjusted Tangible Net Worth, determined as of the last day of each fiscal quarter, of not less than \$850,000,000.



(f) The first sentence of Section 9.20 of the Credit Agreement is amended and restated in its entirety as follows:

9.20 EBITDA. At any time that (a) Net Domestic Cash is less than the Target Cash Level or (b) Net Worldwide Cash is less than the Target Worldwide Cash Level, the Borrower will maintain EBITDA as of the last day of each fiscal period set forth below of not less than the amount set forth below opposite such fiscal period:

(g) Section 9.21 of the Credit Agreement is amended and restated in its entirety as follows:

Section 9.21 Fixed Charge Coverage Ratio. At any time that (a) Net Domestic Cash is less than the Target Cash Level or (b) Net Worldwide Cash is less than the Target Worldwide Cash Level, the Borrower shall not permit, as of the last day of any fiscal quarter, the ratio of (a) EBITDA for the period of the last four fiscal quarters ended on such date to (b) the sum of (i) interest expense for such period plus (ii) scheduled amortization of Debt For Borrowed Money for such period plus (iii) Capital Expenditures for such period, in each case, of the Borrower and its Subsidiaries, as determined on a consolidated basis in accordance with GAAP, to be less than (1) -0.6 to 1.00 for the third fiscal quarter of 2003, (2) 0.2 to 1.00 for the fourth fiscal quarter of 2003, (3) 0.25 to 1.00 for the first fiscal quarter of 2004, (4) 0.4 to 1.0 for the period ending June 2004, (5) 0.8 to 1.00 for the period ending September 2004, (6) 1.0 to 1.00 for the period ending December 2004, (7) 1.0 to 1.00 for the full fiscal year 2005, and (8) 0.9 to 1.00 for the full fiscal year 2006.

Section 3. Conditions to Effectiveness. This Amendment shall become effective upon the satisfaction of all of the following conditions precedent (the date of satisfaction of such conditions being referred to as the "Amendment Effective Date"):

(a) Delivery to the Agent of this Amendment, duly executed and delivered by the Borrower and the Lenders constituting the Majority Lenders.

(b) The representations and warranties set forth in Section 4 of this Amendment shall be true and correct as of the Amendment Effective Date.

(c) The representations and warranties of the Borrower as set forth in the Loan Agreement shall be true and correct in all material respects as of the Amendment Effective Date after giving effect to the amendments contemplated hereby (unless stated to be given as of an earlier date, in which case such representation and warranty shall be true and correct only as of such earlier date); and

(d) As of the Amendment Effective Date, no Event of Default or Default shall have occurred and be continuing after giving effect to this Amendment.

Section 4. The Borrower's Representations and Warranties. The Borrower represents and warrants to the Agent and each Lender a party hereto as of the date hereof and as of the Amendment Effective Date as follows:

(a) The Borrower has all requisite limited liability company power and authority to enter, execute, deliver and perform this Amendment.

(b) The execution and delivery of this Amendment have been duly authorized by all necessary limited liability company action of the Borrower and has been duly executed and delivered by the Borrower.

(c) As of the Amendment Effective Date, no Event of Default or Default shall have occurred and be continuing after giving effect to this Amendment.

Section 5. Reference to and Effect on the Loan Agreement and the other Loan Documents.

(a) The Loan Agreement and the other Loan Documents are subject to amendments only under the express provisions of Section 2 and shall, as so modified, continue to be in full force and effect and are hereby ratified and confirmed by the Borrower in all respects. Each other Loan Document is and shall continue to be in full force and effect and is hereby ratified and confirmed by the Borrower in all respects.

(b) This Amendment shall be construed as one with the Loan Agreement and the other Loan Documents, and the Loan Agreement and the other Loan Documents shall, where the context requires, be read and construed throughout so as to incorporate this Amendment.

Section 6. Execution in Counterparts; Effectiveness. This Amendment may be executed in any number of counterparts, and by the Agent, each Lender and the Borrower in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

Section 7. Headings. The headings contained in this Amendment are for convenience of reference only, are without substantive meaning and should not be construed to modify, enlarge, or restrict any provision.

Section 8. Severability. The illegality or unenforceability of any provision of this Amendment or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Amendment or any instrument or agreement required hereunder.

Section 9. Governing Law. THIS AMENDMENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

---

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

**FASL LLC**, a Delaware limited liability company

By: /s/ Steve Geiser

Name: Steve Geiser

Title: Vice President, Chief Financial Officer and Treasurer

---

LENDERS

**GENERAL ELECTRIC CAPITAL  
CORPORATION,**  
as the Agent for the Lenders and as a Lender

By: /s/ James H. Kaufman

---

Name: James H. Kaufman  
Title: Senior Risk Manager

---

**BANK OF AMERICA, N.A.**, as a Lender

By:           /s/ John MacNamara          

Name: John MacNamara  
Title: Vice President

---

**MERRILL LYNCH CAPITAL, a Division of  
Merrill Lynch Business Financial Services Inc.,  
as a Lender**

By: /s/ Steve Coley

---

Name: Steve Coley  
Title: Group Credit Manager, VP

---

**EUR700,000,000  
TERM LOAN FACILITY  
AGREEMENT**

---

**dated 21 April 2004**

**for**

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG  
the Borrower**

**ABN AMRO BANK N.V.,  
COMMERZBANK AKTIENGESELLSCHAFT, DEUTSCHE BANK  
LUXEMBOURG S.A., DRESDNER KLEINWORT WASSERSTEIN, KFW,  
LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE**

**and**

**LANDESBANK SACHSEN GIROZENTRALE  
as Mandated Lead Arrangers**

**DRESDNER BANK LUXEMBOURG S.A.  
as Facility Agent**

**with**

**DRESDNER BANK AG in Berlin  
as Security Agent and Reporting Agent**

**Baker & McKenzie  
Frankfurt**



CONTENTS

| <u>Clause</u> |  | <u>Page</u> |
|---------------|--|-------------|
|               | <b>SECTION 1</b>   |             |
|               | <b>INTERPRETATION</b>                                      |             |
| 1.            | DEFINITIONS AND INTERPRETATION                             | 1           |
|               | <b>SECTION 2</b>   |             |
|               | <b>THE FACILITY</b>  |             |
| 2.            | THE FACILITY   | 27          |
| 3.            | PURPOSE  | 27          |
| 4.            | CONDITIONS OF UTILISATION                                  | 27          |
|               | <b>SECTION 3</b>   |             |
|               | <b>UTILISATION</b>   |             |
| 5.            | UTILISATION  | 29          |
|               | <b>SECTION 4</b>   |             |
|               | <b>REPAYMENT, PREPAYMENT AND CANCELLATION</b>              |             |
| 6.            | REPAYMENT  | 31          |
| 7.            | PREPAYMENT AND CANCELLATION                                | 33          |
|               | <b>SECTION 5</b>   |             |
|               | <b>COSTS OF UTILISATION</b>                                |             |
| 8.            | INTEREST   | 40          |
| 9.            | INTEREST PERIODS   | 43          |
| 10.           | CHANGES TO THE CALCULATION OF INTEREST                     | 44          |
| 11.           | FEES   | 45          |
|               | <b>SECTION 6</b>   |             |
|               | <b>ADDITIONAL PAYMENT OBLIGATIONS</b>                      |             |
| 12.           | TAX GROSS UP AND INDEMNITIES                               | 47          |
| 13.           | INCREASED COSTS  | 50          |
| 14.           | OTHER INDEMNITIES  | 51          |
| 15.           | MITIGATION BY THE LENDERS                                  | 52          |
| 16.           | COSTS AND EXPENSES   | 52          |
|               | <b>SECTION 7</b>   |             |
|               | <b>REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT</b> |             |
| 17.           | REPRESENTATIONS  | 54          |
| 18.           | INFORMATION UNDERTAKINGS                                   | 61          |
| 19.           | FINANCIAL COVENANTS  | 66          |
| 20.           | GENERAL UNDERTAKINGS                                       | 72          |
| 21.           | EVENTS OF DEFAULT  | 72          |

---

**SECTION 8**

**CHANGES TO PARTIES**

|     |                         |    |
|-----|-------------------------|----|
| 22. | CHANGES TO THE LENDERS  | 89 |
| 23. | CHANGES TO THE BORROWER | 92 |

**SECTION 9**

**THE FINANCE PARTIES**

|     |  |     |
|-----|--|-----|
| 24. | ROLE OF THE AGENTS AND THE MANDATED LEAD ARRANGERS | 93  |
| 25. | CONDUCT OF BUSINESS BY THE FINANCE PARTIES         | 101 |
| 26. | SHARING AMONG THE FINANCE PARTIES                  | 101 |

**SECTION 10**

**ADMINISTRATION**

|     |                               |     |
|-----|-------------------------------|-----|
| 27. | PAYMENT MECHANICS             | 103 |
| 28. | SET-OFF                       | 105 |
| 29. | NOTICES                       | 105 |
| 30. | CALCULATIONS AND CERTIFICATES | 107 |
| 31. | PARTIAL INVALIDITY            | 107 |
| 32. | REMEDIES AND WAIVERS          | 107 |
| 33. | AMENDMENTS AND WAIVERS        | 108 |
| 34. | COUNTERPARTS                  | 109 |

**SECTION 11**

**THE FEDERAL/STATE GUARANTEE, GOVERNING LAW AND ENFORCEMENT**

|     |                             |     |
|-----|-----------------------------|-----|
| 35. | THE FEDERAL/STATE GUARANTEE | 110 |
| 36. | GOVERNING LAW               | 110 |
| 37. | ENFORCEMENT                 | 110 |
| 38. | CONFIRMATION                | 110 |

**THIS AGREEMENT** is dated 21 April 2004 and made between:

- (1) **AMD Fab 36 Limited Liability Company & Co. KG**, a German limited partnership with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRA 5255 (the "**Borrower**");
- (2) **ABN AMRO Bank N.V., Commerzbank Aktiengesellschaft, Deutsche Bank Luxembourg S.A., Dresdner Kleinwort Wasserstein**, the investment banking division of **Dresdner Bank AG, KfW, Landesbank Hessen-Thüringen Girozentrale** and **Landesbank Sachsen Girozentrale**, as Mandated Lead Arrangers (the "**Mandated Lead Arrangers**");
- (3) **The Financial Institutions** listed in Schedule 1 (*The Original Lenders*) as lenders (the "**Original Lenders**");
- (4) **Dresdner Bank Luxembourg S.A.** as Facility Agent for the Lenders (the "**Facility Agent**"); and
- (5) **Dresdner Bank AG in Berlin** as Security Agent for the Lenders (the "**Security Agent**") and as Reporting Agent for the Lenders (the "**Reporting Agent**").

**IT IS AGREED** as follows:

## SECTION 1 INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

"**Account Pledges**" means the following agreements providing for first ranking pledges over:

- (a) all accounts of the Borrower dated 20 April 2004;
- (b) all accounts of AMD Fab 36 Holding GmbH dated 20 April 2004; and
- (c) all accounts of AMD Fab 36 Admin GmbH dated 20 April 2004 .

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Agent**" means the Facility Agent, the Security Agent and/or the Reporting Agent, as the context requires.

"**AMD Fab 36 Admin GmbH**" means a German limited liability company (*Gesellschaft mit beschränkter Haftung*) with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRB 22350.

“**AMD Fab 36 Holding GmbH**” means a German limited liability company (*Gesellschaft mit beschränkter Haftung*) with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRB 21270.

“**AMD Fab 36 Holding’s Assignment of Receivables**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of the claims of AMD Fab 36 Holding GmbH under the Cost Plus Reimbursement Agreement.

“**AMD Fab 36 LLC**” means a Delaware limited liability company with its business address at One AMD Place, Sunnyvale, CA 94088, United States, registered with the State of Delaware on 18 July 2003 and having its registered business address at 1209 Orange Street, Wilmington, 19801 Delaware, United States, of which the organizational identification number in the State of Delaware assigned by the Division of Corporations, as of the date hereof, is 3683217.

“**Assignment of the AMD Call Options**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of rights under the Purchase Agreements over all the partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations held by Limited Partners who are not members of the Group.

“**Assignment of Insurance Claims**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of all of the Borrower’s claims under any insurance policies (with the exception of personal liability insurances and contractors’ all risks insurances until completion of the building phase) it has taken out in relation to the Project.

“**Assignment of Material German Contracts**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of all the Material Contracts governed by German law entered into by the Borrower (but excluding the Partnership Agreement).

“**Assignment of Material US Contracts**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of claims and contractual rights under all the Material Contracts governed by the law of a state of the United States of America entered into by the Borrower.

“**Assignment of Warranties**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of warranty claims (including any underlying Security) under the warranty provided by the Project Engineer.

“**Assignments of Claims**” means the following assignment agreements providing for the assignment to the Security Agent of all the claims against the Borrower of:

- (a) the Guarantor dated 20 April 2004;
- (b) AMD Fab 36 Holding GmbH dated 20 April 2004;
- (c) AMD Fab 36 Admin GmbH dated 20 April 2004;

- (d) the General Partner dated 20 April 2004; and
- (e) the Second General Partner dated 20 April 2004.

“**Assignments of Receivables**” means the Borrower’s Assignment of Receivables and AMD Fab 36 Holding’s Assignment of Receivables, and “**Assignment of Receivables**” shall mean any of them.

“**Auditors**” means Ernst & Young or another international auditing firm of similar repute and standing.

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing or registration.

“**Availability Period**” means the period from and including the Signing Date to and including 28 September 2007.

“**Available Commitment**” means a Lender’s Commitment minus:

- (a) the amount of its participation in any Outstandings; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

“**Available Facility**” means the aggregate for the time being of each Lender’s Available Commitment.

“**Base Financial Statements**” means:

- (a) the audited financial statements of the Borrower for the financial year ended 31 December 2003 audited by Ernst & Young AG; and
- (b) the audited consolidated financial statements of the Guarantor for the financial year ended 28 December 2003 audited by Ernst & Young LLP.

“**Borrower’s Assignment of Receivables**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of the Borrower’s claims under the Cost Plus Reimbursement Agreement.

“**Break Costs**” means the amount (if any) by which:

- (a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period,

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the European interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Frankfurt am Main, Berlin, Dresden, London and Luxembourg and, in relation to a payment date, any TARGET Day.

“**Business Plan**” means the financial model dated 4 November 2003 for the period beginning on 1 January 2003 and ending on 31 December 2012, including profit and loss accounts, balance sheets and cash flow projections relating to the Project, in the agreed form set out in Schedule 7 (*The Business Plan*), together with a favourable opinion of Arthur D. Little dated 4 November 2003.

“**Call Option**” means an agreement providing for call options in favour of the Security Agent in respect of the partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations held by the Limited Partners who are not members of the Group and the Second General Partner.

“**Cash**” has the meaning ascribed to such term in paragraph (a) of Clause 19.1 (*Financial Definitions*).

“**Cash Equivalents**” has the meaning ascribed to such term in paragraph (a) of Clause 19.1 (*Financial Definitions*).

“**Cash Shortfall**” means a Cash shortfall of the Borrower (whether in respect of operating or non-operating costs), including without limitation a Cash shortfall from cost overruns from capital expenditures or arising from reclamations of public allowances or grants (*Investitionszulagen / Investitionszuschüsse*) by the Federal/State Guarantor.

“**Change of Control**” means the direct or indirect acquisition by any person (as such term is used in Section 13 (d) and Section 14 (d) (2) of the Exchange Act) or related persons constituting a group (as such term is used in Rule 13d-5 under the Exchange Act), of:

- (a) beneficial ownership of issued and outstanding shares of voting stock of the Guarantor, the result of which acquisition is that such person or such group possesses in excess of [\*\*\*] per cent. of the combined voting power of all then-issued and outstanding voting stock of the Guarantor; or
- (b) the power to elect, appoint or cause the election or appointment of at least a majority of the members of the board of directors of the Guarantor.

“**Charged Assets**” means any assets of the Borrower that are secured in favour of the Security Agent pursuant to the Security Documents or any of them.

“**Closing**” means the date on which all of the initial conditions precedent set forth in Part I (*Initial Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) are satisfied, or waived, in accordance with Clause 4.1 (*Initial Conditions Precedent*).

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “**Commitment**” in Schedule 1 (*The Original Lenders*) and the amount of any other such Commitment transferred to it under this Agreement; and

---

\*\*\* Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .

(b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*).

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 8 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Facility Agent.

“**Cooperation Agreement**” means the agreement (*Kooperationsvertrag*) dated 20 November 2003 entered into between Free State of Saxony, the Guarantor and Fab 36 Beteiligungs GmbH.

“**Cost Plus Reimbursement Agreement**” means the following agreements:

- (a) Cost Plus Reimbursement Agreement dated on or about the date hereof entered into between the Borrower and AMD Fab 36 Holding GmbH; and
- (b) Cost Plus Reimbursement Agreement dated on or about the date hereof entered into between AMD Fab 36 Holding GmbH and the Guarantor.

“**Credit Rating**” means any long term senior unsecured credit rating assigned to the Guarantor by Moody’s or corporate credit rating assigned to the Guarantor by Standard & Poor’s.

“**Dangerous Substance**” means any radioactive emissions and any natural or artificial substance (in whatever form) the generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing substantial harm to man or any other living organism or damaging the Environment or public health or welfare, including (without limitation) any controlled, special, hazardous, toxic, radioactive or dangerous waste.

“**Debt Issue**” means any issue after the Signing Date of public or privately placed debt securities of the Borrower.

“**Default**” means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) that would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

“**EPC Contract**” means the agreement (*Generalübernehmervertrag*) dated 20 November 2003 made between the Borrower and the Project Engineer pertaining to the design and construction of the Project.

“**Environment**” means the media of air, water and land (wherever occurring) and in relation to the media of air and water includes, without limitation, the air and water within buildings and the air and water within other natural or man-made structures above or below ground and any water contained in any underground strata.

“**Environmental Claim**” means any claim by any person:

- (a) in respect of any loss or liability suffered or incurred by that person as a result of or in connection with any violation of Environmental Law; or
- (b) that arises as a result of or in connection with Environmental Contamination and that could give rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private legal action or public legal action or administrative order or proceedings including, without limitation, any such claim that arises from injury to persons or property.

“**Environmental Contamination**” means each of the following and their consequences:

- (a) any release, discharge, emission, leakage or spillage of any Dangerous Substance at or from any site owned, leased, occupied or used by the Borrower into any part of the Environment; or
- (b) any accident, fire, explosion or sudden event at any site owned, leased, occupied or used by the Borrower which is directly or indirectly caused by or attributable to any Dangerous Substance; or
- (c) any other pollution of the Environment arising at or from any site owned or occupied by the Borrower.

“**Environmental Law**” means all laws, regulations, directives, codes of practice, circulars, guidance notices, instructions and the like issued by a governmental authority and having legal effect concerning the protection of human health, the Environment, the conditions of the work place or the generation, transportation, storage, treatment or disposal of Dangerous Substances.

“**Environmental Licence**” means any permit, licence, authorisation, consent or other approval required by any Environmental Law.

“**Equipment**” means any equipment and tools (including any information technology software or hardware which is embedded or installed in, or essential for the working of, that equipment) to be owned by the Borrower and to be installed on the Site for the development and production of microprocessors on silicon wafers and which is required by the Borrower to implement the Project in accordance with the Business Plan.

“**Equity Issue**” means any issue of partnership interests or shares by the Borrower or any issue or grant of rights to subscribe for, or to convert any security into, partnership interests or shares in the Borrower.

“**Escrow Account**” means an interest-bearing escrow account opened by the Borrower with the Security Agent (alternatively Cash Equivalents may be invested into a non-interest-bearing deposit account with the Security Agent), funded by Utilisations and utilised solely for the purpose set out in Clause 3 (*Purpose*) and Clause 7.4 (*Mandatory Prepayment from the Escrow Account*).

“**EU Notification Approval**” means the unconditional approval of the European Union in respect of the Federal/State Guarantee and in connection with any public allowances or grants (*Investitionszulagen/Investitionszuschüsse*) provided to the Borrower pursuant to a Subsidy Agreement.



“**EURIBOR**” means, in relation to any Loan:

- (a) the Screen Rate; or
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the Reference Banks to Prime Banks in the European interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in Euro for a period comparable to the Interest Period of the relevant Loan.

“**Event of Default**” has the meaning ascribed to such term in Clause 21.1 (*Acceleration*).

“**Excess Contributed Capital Amount**” means the amount, from time to time, of capital in the Borrower contributed by the Guarantor or its Affiliates in excess of the amount required to be contributed by the Guarantor prior to first Utilisation pursuant to Part II (*Conditions Precedent to first Utilisation*) of Schedule 2 (*Conditions Precedent*).

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission from time to time promulgated thereunder.

“**Existing Indebtedness**” means the Financial Indebtedness or other indebtedness of the Borrower outstanding prior to the date of initial Utilisation, but does not include Financial Indebtedness arising under the Revolving Credit Agreement or a Subordinated Loan Agreement.

“**Existing Security**” means the Security granted or existing over the assets of the Obligors that is existing prior to the date of initial Utilisation.

“**Extended Termination Date**” means a date up to three (3) years after the Termination Date proposed by the Borrower and approved by each Lender and the Federal/State Guarantors as the date by which all Loans must be repaid following an extension of the Termination Date for the Loans pursuant to Clause 6.3 (*Extension of Termination Date*) but not later than the date which is the tenth (10<sup>th</sup>) anniversary of the Signing Date or, if that is not a Business Day, the immediately preceding Business Day.

“**Facility**” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“**Facility Amount**” means seven hundred million (700,000,000) Euro.

“**Facility Office**” means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“**Federal/State Guarantee**” means the guarantees granted by the Federal/State Guarantors for the benefit of the Lenders and the Agents (after realisation of all Transaction Security) in respect of eighty (80) *per cent.* of all losses sustained by the Lenders and the Agents in respect of the Finance Documents in accordance with the terms set out in the Federal/State Guarantors Decision.

**“Federal/State Guarantors”** means:

- (a) the Federal Republic of Germany; and
- (b) the Free State of Saxony (*Freistaat Sachsen*).

**“Federal/State Guarantors Decision”** means the decision of the Federal/State Guarantors and of PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft (“**PWC**”) based on the inter-ministerial committee meetings (*interministerielle Sitzungen*) dated 6/17 November 2003 and based on the letters of PwC in connection therewith dated 17 March 2004, 7 April 2004 and 8 April 2004 (*Bürgschaftsentscheidung*), as set out in Schedule 12 (*Federal/State Guarantors Decision*).

**“Fee Letters”** means the letter dated 28 November 2003 made between the Mandated Lead Arrangers, the Borrower and the Guarantor and the letter dated 16 April 2004 made between the Facility Agent and the Borrower setting out any of the fees referred to in Clause 11 (*Fees*) and **“Fee Letter”** means any of them.

**“Finance Documents”** means this Agreement, any Fee Letter, any Security Document and any other document designated as such by the Facility Agent and the Borrower and **“Finance Document”** means any of them.

**“Finance Parties”** means the Facility Agent, the Security Agent, the Reporting Agent, the Mandated Lead Arrangers and the Lenders and **“Finance Party”** means any of them.

**“Financial Indebtedness”** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the German GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; however, for the avoidance of doubt, this does not include any deferred payment arrangements with trade creditors as customary in the industry or endorsement of negotiable instruments for deposit or collection;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“**Fiscal Quarter**” means each of those periods of approximately thirteen weeks ending on 31 March, 30 June, 30 September and 31 December in each financial year.

“**General Partner**” means AMD Fab 36 LLC or, upon substitution of the former by AMD Fab 36 Admin GmbH as general partner of the Borrower, the latter.

“**German GAAP**” means generally accepted accounting principles generally used by the accounting profession and in effect in Germany from time to time (*Grundsätze ordnungsmässiger Buchführung*).

“**German Qualifying Lender**” means:

- (a) a Lender which is:
  - (i) a company resident in Germany for German tax purposes;
  - (ii) a partnership each member of which is a company resident in Germany for German tax purposes; or
  - (iii) a company not so resident in Germany which carries on a trade or business in Germany through a branch or agency and which brings into account interest payable in respect of any relevant Loan in computing its chargeable profits (within the meaning given by Section 49(1) No. 2(a) of the German Income Tax Code),

but only if the Lender described in this paragraph (a) (and further, (A) in the case of a partnership, each member of the partnership, and (B) in the case of a company which carries on a trade or business in Germany through a branch or agency, the branch or agency) is entitled to receive any and all payments under the Finance Documents (subject to completion of any procedural formalities) without a Tax Deduction; or

- (b) a German Treaty Lender.

“**German Treaty**” means a double taxation agreement with Germany which makes provision for full exemption of tax imposed by Germany on interest.

“**German Treaty Lender**” means a Lender which:

- (a) is treated as a resident of a German Treaty State for the purposes of the German Treaty;
- (b) does not carry on business in Germany through a permanent establishment with which that Lender’s participation in a Loan is effectively connected; and
- (c) is entitled under the German Treaty (subject to the completion of any necessary procedural formalities) to receive any and all payments under the Finance Documents without a Tax Deduction (as defined in Clause 12.1 (*Definitions*)).

“**German Treaty State**” means a jurisdiction to which a German Treaty applies.

“**Germany**” means the Federal Republic of Germany.

“**Global Assignment of Receivables**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of all existing and future claims of the Borrower for goods and services provided, or based on other legal grounds, that it holds against all of its debtors with the exception of such claims which have been assigned under the other Security Documents.

“**Group**” means the Guarantor and its Subsidiaries from time to time and “**member of the Group**” shall be construed accordingly.

“**Guarantee Agreement**” means a guarantee agreement of even date herewith containing the irrevocable and unconditional guarantee granted by the Guarantor for the benefit of each Finance Party in respect of the punctual performance by the Borrower of all its payment obligations under the Finance Documents (up to the Facility Amount and all interest and other amounts payable under the Finance Documents to which the Borrower is a party), including an indemnity in relation to repayment claims made in connection with any public allowances or grants (*Investitionszulagen/Investitionszuschüsse*).

“**Guarantor**” means Advanced Micro Devices, Inc.

“**Hedging Strategy**” means the interest hedging strategy of the Borrower and the Guarantor as agreed between the Guarantor and the Lenders and set out in Schedule 1 (*Hedging Strategy*) of the Guarantee Agreement.

“**Holding Company**” means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

“**Information Memorandum**” means the information memorandum dated 10 February 2004 concerning the Borrower and certain members of the Group, prepared by Dresdner Kleinwort Wasserstein using information provided by the Borrower and the Guarantor in relation to the Project, agreed between the Mandated Lead Arrangers and the Borrower, approved by the Borrower and distributed by Dresdner Kleinwort Wasserstein on behalf of the Mandated Lead Arrangers and the Borrower prior to the Signing Date to the Original Lenders.

“**Initial Margin**” means [\*\*\*] *per cent. per annum*.

“**Insurance Adviser**” means Willis Limited or any person who replaces them as Insurance Adviser from time to time with the consent of the Majority Lenders and the Borrower.

“**Insurance Proceeds**” means the total cash proceeds of any insurance claim intended to compensate for damage to any asset of the Borrower (excluding proceeds received in respect of insurance claims for (i) interruption of business or (ii) loss of inventory) received by it, after deducting:

- (a) any reasonable out of pocket costs and expenses incurred by the Borrower or any other member of the Group acting on behalf of the Borrower in relation to such a claim;

---

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .*

- (b) any reasonable costs incurred by the Borrower or any other member of the Group acting on behalf of the Borrower in connection with the adjustment or settlement of any such claim;
- (c) the unpaid balance of any Permitted Indebtedness which must be repaid by the seller on such loss (together with any premium, interest, penalties or fees required to be paid in connection therewith);
- (d) proceeds relating to third party claims which are applied towards meeting such claims; and
- (e) Taxes paid (or reasonably estimated to be payable) by the Borrower or any other member of the Group acting on behalf of the Borrower in respect of such claims.

“**Insurance Report**” means the report referred to in paragraph (c) of the definition of “**Report**”.

“**Intellectual Property**” means any and all rights and interests existing now or in the future in any part of the world in or relating to registered and unregistered trade marks and service marks, domain names, patents, registered designs, utility models, trade names, business names, registered or unregistered copyrights in published works, inventions registered or unregistered, data base rights, know-how, any other intellectual property rights and any applications for any of the foregoing and any goodwill therein.

“**Intellectual Property Rights**” means any rights of an Obligor to Intellectual Property.

“**Interest Period**” means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.6 (*Default Interest and Penalty*).

“**Invoice**” means an invoice issued under a Project Document.

“**Joint Venture**” means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

“**Land Charge**” means all documents to be executed by the Borrower required for the creation of a first ranking land charge in chapter III over all real property of the Borrower located at Wilschdorfer Landstrasse, 01109 Dresden, partial area of approximately 199,000 square meters of the parcel (*Flurstück*) 121/5 in the communal district Wilschdorf, currently file 851 of the land register at the land registry Dresden for Wilschdorf and the security purpose agreement (*Zweckbestimmungserklärung*) in relation to such land charge.

“**Lender**” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 22 (*Changes to the Lenders*), which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

“**Licence Agreement**” means the perpetual licence agreement dated on or about the date hereof made amongst the Borrower, the Guarantor and AMD Fab 36 Holding GmbH and listed in Schedule 13 (*Project Documents*).

“**Limited Partners**” means:

- (a) AMD Fab 36 Holding GmbH (a wholly-owned, direct Subsidiary of the Guarantor) with a minimum holding of at least fifty point one (50.1) *per cent.* of the capital in the Borrower;
- (b) AMD Fab 36 Admin GmbH (a wholly-owned, direct Subsidiary of AMD Fab 36 Holding GmbH);
- (c) Leipziger Messe GmbH; and
- (d) Fab 36 Beteiligungs GmbH.

“**LMA**” means the Loan Market Association.

“**Loan**” means a loan made or to be made by way of a cash advance under the Facility or the principal amount outstanding for the time being of that loan.

“**Majority Lenders**” means:

- (a) if there are no Outstandings, a Lender or Lenders whose Commitments aggregate more than 66<sup>2</sup>/<sub>3</sub>% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66<sup>2</sup>/<sub>3</sub>% of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Outstandings aggregate more than 66<sup>2</sup>/<sub>3</sub>% of all the Outstandings.

“**Management Plan**” means each management plan delivered by the Borrower to the Facility Agent pursuant to paragraph (c) of Clause 18.1 (*Financial Statements*).

“**Management Service Agreement**” means the agreement dated 31 October 2003 made amongst the Borrower, the Guarantor, AMD Saxony Limited Liability Company & Co. KG and AMD Fab 36 Holding GmbH and listed in Schedule 13 (*Project Documents*).

“**Mandatory Cost**” means the percentage rate *per annum* calculated by the Facility Agent in accordance with Schedule 4 (*Mandatory Cost Formula*).

“**Margin**” means the percentage rate *per annum* determined in accordance with Clause 8.2 (*Margin Ratchets*) to Clause 8.4 (*No Margin Ratchets in Events of Default*).

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the business, assets, condition (financial or otherwise) or operation of any Obligor;
- (b) the ability of any Obligor to perform or comply with its obligations under the Finance Documents; or
- (c) the validity, legality or enforceability of the Finance Documents or any rights or remedies of any Finance Party under the Finance Documents (including the perfection or priority of any material part of any Security created pursuant to the Security Documents).

“**Material Contracts**” means the documents listed in Schedule 16 (*The Material Contracts*) as at the date of this Agreement, and any other documents designated as such by the Majority Lenders (acting through the Facility Agent) and the Borrower, and “**Material Contract**” means any of them.

“**Minimum Cash**” has the meaning ascribed to such term in Clause 20.18 (*Minimum Cash Balances*).

“**Minimum Reserve Cost**” means, in respect of a Lender, any Mandatory Cost, including the cost (if any) of its complying with any reserve asset, liquidity or other regulatory requirements affecting it, expressed as a percentage rate *per annum*.

“**Month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) for the purpose of determining the last day of an Interest Period, if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules (a) to (c) will only apply to the last Month of any period.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Net Proceeds**” means, in relation to:

- (a) any disposal of an asset by the Borrower, the total Cash or Cash Equivalent proceeds of such disposal received by the Borrower, after deducting:
  - (i) any reasonable out of pocket costs and expenses incurred by the Borrower in respect of such disposal;
  - (ii) the unpaid balance on the date of such disposal of any Permitted Indebtedness which must be repaid by the Borrower on such disposal (together with any premium, interest, penalties or fees required to be paid in connection therewith); and
  - (iii) Taxes paid (or reasonably estimated to be payable) in connection with such disposal; and/or
- (b) any Debt Issue or any Equity Issue, the total Cash or Cash Equivalent proceeds of such Debt Issue or any Equity Issue received by the Borrower, after deducting:
  - (i) any reasonable out of pocket costs and expenses incurred by the Borrower in respect of such issue (including underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses); and

(ii) Taxes paid (or reasonably estimated to be payable) by the Borrower in connection with such issue.

“**Net Profits**” means the annual profits, net of Tax paid as permitted by paragraph (a) of the definition of “**Permitted Distributions**”, of the Limited Partners who are not members of the Group on their partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations.

“**Obligor**” means the Borrower or the Guarantor.

“**Outstandings**” means, at any time, the aggregate of the amounts of the outstanding Loans (which amounts will also include, without double-counting, any sums deposited into the Escrow Account).

“**Participating Member State**” means any member state of the European Communities that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to European Monetary Union.

“**Participation**” means each of the interests of the silent partners in the silent participation (*stille Gesellschaft*) between the Borrower and the Limited Partners who are not members of the Group.

“**Participation Agreement**” means the agreement (*Vertrag über die Errichtung einer stillen Gesellschaft*) dated on or about the date hereof made between the Borrower and Limited Partners who are not members of the Group establishing the Participation.

“**Partnership Agreement**” means the partnership agreement (*Kommanditgesellschaftsvertrag*) of the Borrower dated on or about the date hereof.

“**Partnership Interest Pledges**” means the agreements providing for first ranking pledges over the partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower granted by:

- (a) AMD Fab 36 Holding GmbH dated 20 April 2004;
- (b) AMD Fab 36 Admin GmbH dated 20 April 2004;
- (c) the General Partner dated 20 April 2004; and
- (d) the Second General Partner dated 20 April 2004,

relating to all present and future partnership interests held by such partners.

“**Party**” means a party to this Agreement and includes its successors in title, permitted assigns and permitted transferees.

“**Permitted Business**” means, in relation to the Borrower, the development, implementation and operation of the Project, together with any activity which is ancillary or incidental to any of the above.



**“Permitted Disposal”** means:

- (a) disposals made on arm’s length terms in the ordinary course of trading of the disposing entity;
- (b) disposals of assets exchanged for or replaced by other assets comparable or superior as to type, value and quality;
- (c) disposals on arm’s length terms of any surplus or obsolete or worn-out assets which in the reasonable opinion of the Borrower are not required for the efficient operation of the business of the Borrower;
- (d) use of cash where such use is not otherwise prohibited by the Finance Documents;
- (e) disposals constituted by the creation of any Permitted Security;
- (f) disposals where the proceeds are applied in accordance with the terms of Clause 7.2 (*Mandatory Prepayment from Asset Disposals*); or
- (g) disposals, other than any permitted under paragraphs (a) to (f) above, where the higher of the book value or the consideration received (when aggregated with the higher of the book value or the consideration received for any other sale, lease, transfer or other disposal falling within this paragraph (g)) does not exceed twenty-five million (25,000,000) Euro (or its equivalent in another currency or currencies at the date of such disposal) in any financial year.

**“Permitted Distributions”** means:

- (a) **provided that** no:
  - (i) Default has occurred (only to the extent that the occurrence of such Default is not dependent on a determination under any of the Finance Documents); or
  - (ii) Event of Default has occurred,and is continuing (unless otherwise determined by the Majority Lenders), (A) distributions by the Borrower in amounts necessary to permit the Limited Partners, or any Holding Company of the Limited Partners on their behalf, to pay when due and payable any amount of German income taxes required to be paid by the Limited Partners on their income on the annual profits of the partnership as partners of the Borrower and on the annual profits from the Participations and (B) provided that the Credit Rating at the date of such distribution is B3 or better by Moody’s and B- or better by Standard & Poor’s, distributions (by way of dividends, repurchase, redemption or otherwise) by the Borrower to AMD Fab 36 Holding GmbH or any Holding Company or Affiliate thereof on its behalf, in amounts not exceeding, in the aggregate, the Excess Contributed Capital Amount other than Excess Contributed Capital Amounts which have been made available pursuant to paragraph (b) (iv) below;

- (b) **provided that** no Default or Event of Default has occurred and is continuing (unless otherwise determined by the Majority Lenders):
- (i) distributions to Limited Partners who are not members of the Group of:
    - (A) annual profits from their partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower; and
    - (B) annual profits or interest on the Participations,in an amount not exceeding thirteen (13) *per cent. per annum* of their respective capital shares (*Pflichtkapital*) or capital contributions made in respect of the Participations, respectively; **provided that**, the Credit Rating is Caa1 or better by Moody's and CCC+ or better by Standard & Poor's;
  - (ii) payments of principal under the Revolving Credit Agreement made in compliance with the provisions of the Subordination Agreement, any payment in accordance therewith being subject to a Credit Rating at the date of such payment of B3 or better by Moody's and B- or better by Standard & Poor's, or other relevant payments permitted under the Subordination Agreement;
  - (iii) payments made to the General Partner and the Second General Partner in an aggregate amount of up to the equivalent of USD75,000 *per annum* (plus applicable VAT); and
  - (iv) repayments of partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations, and distribution of Net Profits converted into equity, made in accordance with the Partnership Agreement, the Participation Agreement, the Purchase Agreements and the Federal/State Guarantor Decision to Leipziger Messe GmbH and/or Fab 36 Beteiligungs GmbH
    - (aa) in any amount up to the excess, if any, of Cash and Cash Equivalents over the sum of:
      - (aaa) the Minimum Cash;
      - (bbb) amounts held in the Escrow Account;
      - (ccc) outstandings under the Revolving Credit Agreement, if any;
      - (ddd) prepayments made under the Cost Plus Reimbursement Agreement (this does not apply to prepayments made when due under the Cost Plus Reimbursement Agreement); and
      - (eee) EUR100,000,000,**provided that**, the Outstandings and Total Commitments under this Agreement are EUR250,000,000 or less; or
    - (bb) after 31 December 2005, in amounts provided concurrently by the Guarantor under a Subordinated Loan Agreement or contributed by means of Excess Contributed Capital Amounts.

“**Permitted Indebtedness**” means any Financial Indebtedness:

- (a) arising under or permitted pursuant to the Finance Documents or Project Documents;
- (b) to the extent that such Financial Indebtedness is subordinated on terms acceptable to the Majority Lenders (acting reasonably) or pursuant to the Subordination Agreement;
- (c) other indebtedness arising under any Existing Indebtedness, **provided that** such Financial Indebtedness and/or indebtedness is repaid or prepaid before the date of initial Utilisation;
- (d) arising under the Revolving Credit Agreement or a Subordinated Loan Agreement;
- (e) arising under and permitted by Clause 20.25 (*Treasury Transactions*) or Clause 20.26 (*Hedging*);
- (f) to which the Majority Lenders shall have given their prior written consent;
- (g) in respect of current accounts payable and accrued expenses incurred in the ordinary course of business;
- (h) from the first Utilisation Date, incurred for leasing arrangements over assets in the ordinary course of business in an aggregate amount not exceeding in each case:
  - (i) twenty-five million (25,000,000) Euro up to and including 31 December 2007;
  - (ii) fifty million (50,000,000) Euro up to and including 31 December 2008; and
  - (iii) seventy-five million (75,000,000) Euro thereafter;
- (i) without double counting, arising under any guarantee or indemnity referred to in paragraph (b) of the definition of “**Permitted Loans and Guarantees**”; or
- (j) not falling within paragraphs (a) to (i) above **provided that** the aggregate amount of Financial Indebtedness, performance bonds, surety bonds and contingent obligations incurred in the ordinary course of business by the Borrower falling within this paragraph (j) does not exceed ten million (10,000,000) Euro (or its equivalent in another currency or currencies on the date it was incurred) at any time.

“**Permitted Loans and Guarantees**” means:

- (a) any loan, credit or other financial accommodation arising under or permitted pursuant to the Transaction Documents; and
- (b) any guarantee or indemnity given by the Borrower in the ordinary course of business in respect of indebtedness or Financial Indebtedness pursuant to paragraphs (c), (e) (to the extent not exceeding the ten million (10,000,000) Euro limit set out in paragraph (j), of the definition of “**Permitted Indebtedness**”) or (g), or any performance bonds, surety bonds or contingent obligations pursuant to paragraph (j), of the definition of “**Permitted Indebtedness**” with a term not exceeding the due date of any such indebtedness or Financial Indebtedness, performance bonds, surety bonds or contingent obligations, as applicable.

“Permitted Security” means:

- (a) any of the Security created pursuant to the Security Documents together with such other Security as the Facility Agent may by notice to the Borrower pursuant to this Agreement or a Security Document demand that the Borrower provides for all or any part of its obligations under the Finance Documents;
- (b) any netting or set-off arrangement entered into by the Borrower for the purposes of implementing the Hedging Strategy;
- (c) any Existing Security, **provided that** such Security is released before the date of initial Utilisation;
- (d) any Security arising by operation of law and in the ordinary course of trading, **provided that** any such Security is discharged within twenty (20) days after having arisen;
- (e) any Security imposed by court order, other than one applied for by the Borrower, **provided that** the amounts secured thereunder relate to:
  - (i) overdue amounts; and
  - (ii) for which the Borrower contests in good faith;
- (f) any retention of title arrangement entered into by the Borrower in the normal course of its trading activities on the counterparty’s standard or usual terms to the extent that such terms are customary;
- (g) any Security over or affecting any asset acquired by the Borrower after the date of this Agreement if:
  - (i) the Security was not created in contemplation of the acquisition of that asset by it;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by it; and
  - (iii) the Security is removed or discharged within two (2) months of the date of acquisition of such asset;
- (h) any pledge over a deposit or any guarantee (up to an aggregate amount not exceeding five (5) *per cent.* of the guaranteed maximum price under the EPC Contract) to collateralise the Borrower’s obligations under the EPC Contract; **provided that**, the Security Agent benefits from a second-ranking pledge over such deposit or from a similar second ranking security interest; and
- (i) any Security created in relation to any indebtedness permitted pursuant to paragraph (j) of the definition of “Permitted Indebtedness”.

“Prime Bank” means a financial institution with a rating of not lower than A3 (Moody’s Investor Services, Inc.) or A- (Standard & Poor’s Corporation).

“**Project**” means the construction and operation of a 300mm silicon wafer microprocessor fabrication facility located at Wilschdorfer Landstrasse, 01109 Dresden to be owned and operated by the Borrower with a planned total capital expenditure (including, without limitation, construction costs) by 31 December 2007 of approximately two billion, four hundred million (2,400,000,000) Euro.

“**Project Documents**” means the documents listed in Schedule 13 (*The Project Documents*) as at the Signing Date, and any other documents entered into by either Obligor that are not Finance Documents, are required in relation to the Project and are designated as such by the Facility Agent and the Borrower, and “**Project Document**” means any of them.

“**Project Engineer**” means M+W Zander Facility Engineering GmbH or any person who replaces them as Project Engineer from time to time with the consent of the Majority Lenders and the Borrower.

“**Project Works**” means the design, development and construction of the Project at the Site and any other works contemplated in the Project Documents in relation to the Project.

“**Purchase Agreements**” means the purchase agreement dated on or about the date hereof made between Leipziger Messe GmbH, Fab 36 Beteiligungs GmbH, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH and Advanced Micro Devices, Inc., concerning the partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower (“*Kaufvertrag über Kommanditgesellschaftsanteile*”) and the purchase agreement dated on or about the date hereof made between Leipziger Messe GmbH, Fab 36 Beteiligungs GmbH, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, Advanced Micro Devices, Inc. and the Borrower concerning the Participations of the Limited Partners who are not members of the Group (“*Kaufvertrag über stille Beteiligungen*”).

“**Qualifying Lender**” means in respect of any payment by the Borrower or the Guarantor which is capable of attracting a Tax Deduction (as defined in Clause 12.1 (*Definitions*)), a Lender which is beneficially entitled to a payment of interest under a Finance Document and which is both a German Qualifying Lender and a US Qualifying Lender.

“**Quarter Date**” means the last day of each Fiscal Quarter.

“**Quotation Date**” means, in relation to any period for which an interest rate is to be determined, two TARGET Days before the first day of that period unless market practice differs in the European interbank market, in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the European interbank market (and if quotations would normally be given by leading banks in the European interbank market on more than one day, the Quotation Day will be the last of those days).

“**Real Estate Appraiser**” means Angermann & Lüders GmbH & Co. KG or any person who replaces them as Real Estate Appraiser from time to time with the consent of the Majority Lenders and the Borrower.

“**Reference Banks**” means Commerzbank Aktiengesellschaft, Deutsche Bank Luxembourg S.A. and Dresdner Bank AG and the principal offices of such other banks as may be appointed by the Facility Agent in consultation with the Borrower.

“**Relevant Invoice**” means, in relation to a Utilisation Request, each Invoice in relation to which that Utilisation Request has been given, as identified in such Utilisation Request and

relating to the purchase of Equipment and the payment of costs for Services incurred by the Borrower for the purposes of implementing the Project (in accordance with the Business Plan).

“**Relevant Period**” has the meaning given to it in Clause 19.1 (*Financial Definitions*).

“**Repayment Date**” means each of the dates specified in the table in Clause 6.1 (*Repayment of the Loans*).

“**Repayment Instalment**” means, in relation to each Repayment Date, the amount (expressed in Euro) by which the aggregate principal amount of the Outstandings is to be reduced on that Repayment Date in accordance with paragraph (a) of Clause 6.1 (*Repayment of the Loans*), as reduced, if applicable, in accordance with Clause 7.1 (*Illegality*) to Clause 7.4 (*Mandatory Prepayment from the Escrow Account*) (inclusive), or Clause 7.7 (*Voluntary Prepayment of the Loans*) to 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*) (inclusive).

“**Repeating Representations**” means each of the representations set out in Clause 17.2 (*Status*) to Clause 17.8 (*Governing Law and Enforcement*) (inclusive), Clause 17.11 (*No Default*) to Clause 17.23 (*No Security*) (inclusive) and Clause 17.27 (*Management Plans*) to Clause 17.31 (*Compliance with Laws and Regulations*) (inclusive).

“**Reports**” means:

- (a) the report of the Technical Appraiser dated 26 September 2003 concerning the projected fair market value of the Equipment;
- (b) the report of Arthur D. Little dated 4 November 2003 concerning Project costs, feasibility, state of technology and realisation;
- (c) the report of the Insurance Adviser dated 5 April 2004 confirming that the contemplated insurance cover for the business and assets of the Borrower is sufficient;
- (d) the market research report from Gartner Dataquest, Inc. dated 8 August 2003; and
- (e) the report of the Real Estate Appraiser dated 10 September 2003 concerning the real estate/property and site of the Borrower,

each such Report, other than that set out in paragraph (d) above, being addressed to, or permitted to be relied upon by, the Finance Parties, and “**Report**” shall be construed accordingly.

“**Required Insurance**” means the insurance cover under the policies taken out pursuant to the contracts set out in Schedule 17 (*Required Insurance*).

“**Revolving Credit Agreement**” means the revolving credit agreement in an amount of EUR 750,000,000 dated on or about the date hereof made between the Guarantor and the Borrower.

“**Screen Rate**” means the percentage rate *per annum* determined by the Banking Federation of the European Union for the relevant period displayed on the appropriate page of the Telerate screen. If the agreed page is replaced or service ceases to be available, the Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders.

---

“**Second General Partner**” means LM Beteiligungsgesellschaft mbH.

“**SEC**” means the United States Securities and Exchange Commission or other successor United States governmental authority.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Security Agency Agreement**” means the security agency agreement to be made between the Borrower, the Guarantor, the General Partner, the Second General Partner, AMD Fab 36 Admin GmbH, AMD Fab 36 Holding GmbH and the Finance Parties, in the form set out in Schedule 10 (*Form of Security Agency Agreement*).

“**Security Assignment**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of the fixed and current assets of the Borrower.

“**Security Documents**” means:

- (a) the Guarantee Agreement;
- (b) the Federal/State Guarantee;
- (c) the Partnership Interest Pledges;
- (d) the Share Pledges;
- (e) the Land Charge;
- (f) the Security Assignment;
- (g) the Assignments of Receivables;
- (h) the Global Assignment of Receivables;
- (i) the Assignment of Warranties;
- (j) the Assignment of Material German Contracts;
- (k) the Assignment of Material US Contracts;
- (l) the Assignment of Insurance Claims;
- (m) the Account Pledges;
- (n) the Assignments of Claims;
- (o) the Call Option;
- (p) the Assignment of the AMD Call Options;
- (p) the Subordination Agreement;

- 
- (r) the Security Agency Agreement; and
  - (s) any other document evidencing or creating Security over any asset of the Borrower to secure any obligation of the Borrower to a Finance Party under the Finance Documents or any of them.

“**Security Providers**” means the Federal/State Guarantors and the Obligors (or Subsidiaries of the Obligors), and “**Security Provider**” means any of them.

“**Selection Notice**” means a notice substantially in the form set out in Part II of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

“**Services**” means the installation and commissioning of the Equipment and any additional building and installation services associated therewith.

“**Share Pledges**” means the following agreements providing for first ranking pledges over:

- (a) the shares of AMD Fab 36 Holding GmbH dated 20 April 2004;
- (b) the shares of AMD Fab 36 Admin GmbH dated 20 April 2004;
- (c) the limited liability interests of the General Partner dated 20 April 2004; and
- (d) the shares of the Second General Partner dated 20 April 2004,

relating to all present and future shares held by such partners.

“**Signing Date**” means the date of this Agreement.

“**Site**” means the real property purchased and buildings to be erected at Wilschdorfer Landstrasse, 01109 Dresden in relation to the Project.

“**Specified Time**” means a time determined in accordance with Schedule 9 (*Timetables*).

“**Standard & Poor’s**” means Standard & Poor’s Corporation.

“**Subordinated Loan**” means any loan made to, or debt instrument issued by, the Borrower, under a Subordinated Loan Agreement, the Revolving Credit Agreement or any other document or instrument, which is subordinated to the rights and claims of the Finance Parties in accordance with the Subordination Agreement.

“**Subordinated Loan Agreement**” means any agreement pursuant to which the Guarantor provides a subordinated loan to the Borrower, which subordinated loan will be subject to the restrictions imposed by Clause 20.20 (*Subordinated Loans*) and Clause 20.21 (*Distributions*).

“**Subordination Agreement**” means the subordination agreement to be made amongst, *inter alia*, the Borrower, the Guarantor, the General Partner, the Second General Partner, the Limited Partners and the Finance Parties in relation to the equity and subordinated debt of the Borrower and other claims of the Affiliates of the Borrower in the form set out in Schedule 11 (*Form of Subordination Agreement*).



“**Subsidiary**” means, in relation to any company, corporation or partnership:

- (a) a company, corporation or partnership which is “**controlled**”, directly or indirectly, by and therefore is a “**dependent enterprise**”(abhängiges Unternehmen) of the first mentioned company, partnership or corporation, in the case of the latter, within the meaning of Sec. 17 Stock Corporation Act (*Aktiengesetz*), or which is a “**subsidiary**” (*Tochterunternehmen*) within the meaning of Sec. 290 Commercial Code (*Handelsgesetzbuch*) of such company, corporation or partnership;
- (b) a company, corporation or partnership more than half of the issued share capital of which is beneficially owned, directly or indirectly, by the first mentioned company, corporation or partnership or more than half of the dividend of which is declared from time to time by the first mentioned company;
- (c) a partnership in which:
  - (i) there is a participation of more than fifty (50) *per cent.* in the assets of such partnership by the first mentioned company, corporation or partnership; or
  - (ii) the first mentioned company, corporation or partnership has the power to (A) cast, or control the casting of, more than fifty (50) *per cent.* of the maximum number of votes that might be cast at a general meeting, (B) appoint or remove all, or the majority of, the directors or other equivalent officers, or (C) give directions with respect to the operating and financial policies which the directors or other equivalent officers thereof are obliged to comply with; or
- (d) in the case of a limited partnership, a partnership in which the general partner has control and the first mentioned company, corporation or partnership has control of the general partner,

and, for this purpose, a company, corporation or partnership shall be treated as being controlled by another if that other company, corporation or partnership is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

“**Subsidy Agreement**” means any agreement made by the Borrower or any administrative decision (*Bescheid*) addressed to the Borrower in relation to grants and/or allowances (*Investitionszulagen/Investitionszuschüsse*) in connection with the Project and any statutory or other obligations imposed on the Borrower associated therewith.

“**TARGET**” means Trans-European Automated Real-time Gross Settlement Express Transfer payment system.

“**TARGET Day**” means any day on which TARGET is open for the settlement of payments in Euro.

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“**Technical Adviser**” means Fraunhofer Institut Siliziumtechnologie (ISIT), Fraunhoferstraße 1, 25524 Itzehoe, or any person who replaces them as Technical Adviser from time to time with the consent of the Majority Lenders and the Borrower.

“**Technical Appraiser**” means Emerald Technology Valuations LLC or any person who replaces them as Technical Appraiser from time to time with the consent of the Majority Lenders and the Borrower.

“**Technical Completion**” means attainment of the following:

- (a) a certificate issued by the Technical Adviser confirming that the Borrower has in place a wafer fabrication process that is suitable for 300mm, high volume production of advanced, competitive microprocessors;
- (b) a certificate issued by the Technical Adviser confirming that the Borrower has achieved a minimum of 325 wafer starts per week on average over a period of four (4) consecutive weeks (the “**Average WSPW**”), and a seventy-five (75) *per cent.* average process yield over the same period of four (4) consecutive weeks (the “**Average Yield**”); and
- (c) cumulative capital expenditures (less write-offs for technically obsolete or unsuitable equipment) of the Borrower greater or equal to one billion (1,000,000,000) Euro, as confirmed by the Auditors.

“**Termination Date**” means the date which falls on the seventh (7<sup>th</sup>) anniversary of the Signing Date.

“**Total Commitments**” means the aggregate of the Commitments, being seven hundred million (700,000,000) Euro at the Signing Date.

“**Transaction Documents**” means the Finance Documents and the Project Documents and any other document designated as such by the Facility Agent and the Borrower and “**Transaction Document**” means any of them.

“**Transaction Security**” means any Security for all or any part of the obligations of the Borrower under the Finance Documents or any of them expressed to be created by or pursuant to, or to be evidenced in, the Security Documents or any of them.

“**Transfer Certificate**” means a certificate substantially in one of the forms set out in Schedule 5 (*Form of Transfer Certificates*) or any other form agreed between the Facility Agent and the Borrower.

“**Transfer Date**” means, in relation to a transfer, the later of:

- (a) the proposed Transfer Date specified in the Transfer Certificate; and
- (b) the date on which the Facility Agent executes the Transfer Certificate.

“**Treasury Transaction**” means any currency or interest purchase, cap or collar agreement, forward rate agreement, interest rate or currency future or option contract, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement.

“**Treaties**” means the German Treaty and the US Treaty, and “**Treaty**” means any of them.

“**Treaty State**” means a jurisdiction having both a German Treaty and a US Treaty.

“**Unpaid Sum**” means any sum due and payable but unpaid by the Borrower under the Finance Documents.

“**US Qualifying Lender**” means:

- (a) a Lender incorporated under the laws of the United States or any political sub-division thereof, but only if the Lender is entitled to receive any and all payments under the Finance Documents (subject to completion of any procedural formalities) without a Tax Deduction; or
- (b) a US Treaty Lender.

“**US Treaty**” means a double taxation agreement with the United States which makes provision for full exemption of tax imposed by the United States on interest.

“**US Treaty Lender**” means a Lender which:

- (a) is treated as a resident of a US Treaty State for the purposes of the US Treaty;
- (b) does not carry on business in the United States through a permanent establishment with which that Lender’s participation in a Loan is effectively connected; and
- (c) is entitled under the US Treaty (subject to the completion of any necessary procedural formalities) to receive any and all payments under the Finance Documents without a Tax Deduction (as defined in Clause 12.1 (*Definitions*)).

“**US Treaty State**” means a jurisdiction to which a US Treaty applies.

“**Utilisation**” means a utilisation of the Facility.

“**Utilisation Date**” means the date of a Utilisation, being the date on which the relevant Loan is made or to be made.

“**Utilisation Request**” means a notice substantially in the form set out in Part I of Schedule 3 (*Requests*).

“**VAT**” means value added tax and any other tax of a similar nature.

## 1.2 Interpretation

(a) Any reference in this Agreement to:

- (i) “**assets**” includes present and future properties, revenues and rights of every description;
- (ii) the “**Facility Agent**”, any “**Mandated Lead Arranger**”, the “**Reporting Agent**”, the “**Security Agent**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**” or any “**Party**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (iii) “**Dresdner Kleinwort Wasserstein**” is a reference to Dresdner Kleinwort Wasserstein, the investment banking division of Dresdner Bank AG;

- 
- (iv) the “**European interbank market**” means the interbank market for Euro operating in Participating Member States;
  - (v) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, supplemented, modified, renewed, extended, restated or novated;
  - (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vii) a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (viii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (ix) a provision of law is a reference to that provision as amended or re-enacted; and
  - (x) unless a contrary indication appears, a time of day is a reference to Frankfurt am Main time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (d) If there is any conflict between this Agreement and any other Finance Document, the provisions of this Agreement will prevail.
  - (e) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been remedied or waived.

### 1.3 **Currency definitions**

In this Agreement:

- (a) “**EUR**” and “**Euro**” denote the single currency of the Participating Member States;
- (b) “**USD**” and “**Dollar**” denote the lawful currency of the United States; and
- (c) “**GBP**” and “**Sterling**” denote the lawful currency of the United Kingdom.

**SECTION 2**  
**THE FACILITY**

**2. THE FACILITY**

**2.1 The Facility**

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in Euro in an aggregate amount equal to the Total Commitments.

**2.2 Finance Parties' Rights and Obligations**

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt. The creation of jointly held assets (*Gesamthandsvermögen*) is excluded.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

**3. PURPOSE**

The Borrower shall:

- (a) by way of Utilisations during the Availability Period; and/or
  - (b) for up to a twelve (12) Month period after the expiry of the Availability Period, by way of cash withdrawals from the Escrow Account,
- apply all amounts borrowed by it under the Facility in or towards the payment of the Relevant Invoices (unless the Utilisation(s) are made for the purposes of being deposited into the Escrow Account).

**4. CONDITIONS OF UTILISATION**

**4.1 Initial Conditions Precedent**

The Borrower will ensure that within five (5) Business Days of the Signing Date, the Facility Agent will have received all of the documents and other evidence listed in Part I (*Initial Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

**4.2 Conditions Precedent to First Utilisation**

- (a) The Borrower may not deliver the first Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part II (*Conditions Precedent to First Utilisation*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory

to the Facility Agent and the proposed Utilisation together with all outstandings under the Syndicated Loan Agreement dated 11 March 1997 with AMD Saxony Limited Liability Company & Co. KG will not exceed the Facility Amount. The Facility Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

- (b) Unless the Borrower is also able to satisfy the requirements of paragraph (a) of Part III (*Further Conditions Precedent*) of Schedule 2 (*Conditions Precedent*), it may only deliver the first Utilisation Request for a sum to be drawn of no more than four hundred million (400,000,000) Euro.

#### 4.3 **Further Conditions Precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' Participation*) if on the date of any further Utilisation Request and on the proposed Utilisation Date, and the Facility Agent will only be obliged to permit a withdrawal from the Escrow Account (other than as required for investments in permitted Cash Equivalents) if on the date of a request for such withdrawal and on the date of such withdrawal:

- (a) the Facility Agent has received all of the documents and other evidence required by Part III (*Further Conditions Precedent*) of Schedule 2 (*Conditions Precedent*), to the extent applicable, in form and substance satisfactory to the Facility Agent;
- (b) the proposed Utilisation together with the Loans and all outstandings under the Syndicated Loan Agreement dated 11 March 1997 with AMD Saxony Limited Liability Company & Co. KG will not exceed the Facility Amount;
- (c) no Default is continuing or would result from the proposed Loan; and
- (d) the Repeating Representations made or deemed to be made are true, accurate and correct in all material respects as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true, accurate and correct in all material respects on the date originally made or deemed to be made.

#### 4.4 **Maximum Number of Loans**

- (a) The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation more than twenty (20) Loans would be outstanding.
- (b) The Borrower may not deliver more than two (2) Utilisation Request in any single Month.
- (c) The Borrower may not request that a Loan be divided if, as a result of the proposed division, there would be outstanding more Loans than provided for in paragraph (a) above.

---

**SECTION 3**  
**UTILISATION**

**5. UTILISATION**

**5.1 Delivery of a Utilisation Request**

The Borrower may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than at the Specified Time.

**5.2 Completion of a Utilisation Request**

(a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

(i) the proposed Utilisation Date is a Business Day within the Availability Period; however, on or before the expiry of the Availability Period, any portion or all of the undrawn Commitments may, at the option of the Borrower, either be:

(A) drawn down and deposited into the Escrow Account for future application solely towards the purpose set out in Clause 3 (*Purpose*); or

(B) cancelled;

(ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and Amount*);

(iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*); and

(iv) it provides payment instructions.

(b) Only one Loan may be requested in each Utilisation Request.

**5.3 Currency and Amount**

(a) The currency specified in a Utilisation Request must be Euro.

(b) The amount of the proposed Loan must be an amount that is not more than that of the Available Facility and which is a minimum of seven and one half million (7,500,000) Euro and is an integral multiple of two and one half million (2,500,000) Euro, or, if less, the Available Facility.

**5.4 Lenders' Participation**

(a) If the conditions set out in this Agreement have been met each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

(b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to the making of such Loan.

(c) The Facility Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan, in each case by the Specified Time.

5.5 **Cancellation of the Facility**

If, prior to the date on which it receives a Utilisation Request, the Facility Agent receives a notice of cancellation of the whole or part of the Available Facility which is to take effect under Clause 7.9 (*Voluntary Cancellation*) on a date falling on or after such date (but before the Loan requested in that Utilisation Request has been made), such Available Facility shall be treated, for the purpose of Clause 5.3 (*Currency and Amount*), as if it had already been reduced by the amount of such cancellation (as specified in such notice). Nothing in this Clause 5.5 shall be treated as reducing any Lender's Available Commitment under the Facility for the purposes of Clause 11.1 (*Commitment Fee*) prior to the date on which such cancellation would otherwise take effect pursuant to such cancellation notice.

5.6 **Cancellation of a Lender's Commitment**

If a Lender's Commitment is cancelled under Clause 7.1 (*Illegality*) or Clause 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*) after the Facility Agent has received a Utilisation Request but before the Loan requested in that Utilisation Request has been made, then, unless the commitment to advance an amount equal to the proportion which such Lender's Commitment bore to the Total Commitments immediately prior to such cancellation taking effect (the "**Affected/Subject Lender's Proportion**") is assumed by, either:

- (a) another Lender or other Lenders, to the extent not exceeding such Lender's or Lenders' Available Commitment; or
- (b) an Eligible Transferee (as defined in and in accordance with Clause 7.1 (*Illegality*) or Clause 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*), as the case may be) procured by the Borrower,

within one (1) day of receipt of such Utilisation Request, that Loan shall be reduced by the amount of the Affected/Subject Lender's Proportion.



---

**SECTION 4**

**REPAYMENT, PREPAYMENT AND CANCELLATION**

**6. REPAYMENT**

**6.1 Repayment of the Loans**

- (a) Subject to the other provisions of this Agreement, the Borrower shall repay on each Repayment Date an amount or amounts such that the amount of all the Outstandings is reduced by an amount equal to the percentage of the aggregate amount of all such Loans as calculated in paragraph (b) below.
- (b) The Borrower shall reduce the amount of all the Outstandings by an amount equal to the percentage of the aggregate amount of all such Loans on 29 September 2007 which is specified in Column B and appears opposite the relevant Repayment Date in the table below:

| <u>Column A</u><br><u>Repayment Date</u> | <u>Column B</u><br><u>Percentage Repaid</u><br><u>(from the aggregate amount of</u><br><u>all Loans as at the end of the</u><br><u>Availability Period)</u> |
|--|---|
| 30 September 2007                        | 3.00%   |
| 30 December 2007                         | 3.00%   |
| 31 March 2008                            | 5.00%   |
| 30 June 2008                             | 5.00%   |
| 30 September 2008                        | 5.00%   |
| 30 December 2008                         | 5.00%   |
| 31 March 2009                            | 7.50%   |
| 30 June 2009                             | 7.50%   |
| 30 September 2009                        | 7.50%   |
| 30 December 2009                         | 7.50%   |
| 31 March 2010                            | 8.00%   |
| 30 June 2010                             | 8.00%   |
| 30 September 2010                        | 9.00%   |
| 30 December 2010                         | 9.00%   |
| 31 March 2011                            | 10.00%  |
|  | 100.00%   |

- 
- (c) Each repayment which is to be made under paragraph (b) above on a Repayment Date shall be made:
- (i) firstly, by repaying on such Repayment Date Outstandings having Interest Periods ending on such Repayment Date in accordance with paragraph (d) below, if applicable; and
  - (ii) secondly, by repaying the other Loans in accordance with paragraph (d) below, if applicable.
- (d) If the aggregate amount of all the Outstandings having an Interest Period ending on a Repayment Date exceeds the Repayment Instalment due on that date, then the Borrower may, by not less than four (4) Business Days' prior notice to the Facility Agent, select which of those Loans will be wholly or partially repaid to enable the repayment required under paragraph (b) above to occur; **provided that**, if the Borrower fails to give such notice, the Facility Agent shall select the Loans to be wholly or partially repaid as aforesaid.
- (e) The Borrower may not reborrow any part of the Facility which is repaid.

**6.2 Supplemental Cash Reserves**

If on any scheduled Repayment Date the Credit Rating is rated Caa2 or lower by Moody's or CCC or lower by Standard & Poor's, the Borrower shall, in accordance with the directions of the Facility Agent (acting on the instructions of the Majority Lenders), ensure that the Cash reserves to be held in accordance with Clause 20.18 (*Minimum Cash Balances*) shall be increased as provided therein.

**6.3 Extension of Termination Date**

- (a) The Borrower may at any time after the end of the Availability Period, **provided that** the aggregate value of all Outstandings is no more than EUR420,000,000, by written notice (the "**Renewal Request**") request that the Termination Date be extended to the Extended Termination Date in accordance with a new proposed repayment schedule ("the **New Repayment Schedule**") replacing the table set out in paragraph (b) of Clause 6.1 (*Repayment of the Loans*) (the "**Extension**"), provided such Renewal Request is received by the Facility Agent no earlier than one hundred and twenty (120) days and no later than ninety (90) days prior to the date on which the Borrower wants the Extension to take effect (the "**Effective Date**").
- (b) The Facility Agent shall promptly notify each Lender and the Federal/State Guarantors of its receipt of a Renewal Request. Each Lender shall have the right, in its absolute discretion, to accept or decline any Renewal Request and the Federal/State Guarantors shall have the right to veto the Extension. A Lender and the Federal/State Guarantors which agree(s) to the Extension as requested by a Renewal Request shall notify the Facility Agent of its agreement within sixty (60) days after the date on which the Facility Agent has notified the Lenders and the Federal/State Guarantors (the "**Renewal Decision Date**"). If a Lender or the Federal/State Guarantors do not so notify the Facility Agent, it/they will be deemed to have declined or vetoed the Extension.

- (c) If all the Lenders, together with the Federal/State Guarantors, agree to the Extension, then:
  - (i) on the Effective Date, the date for the repayment of the participations in the Loans of the Lenders as at the Termination Date will be extended to the Extended Termination Date in accordance with the New Repayment Schedule; and
  - (ii) the Borrower shall, on the first (1<sup>st</sup>) Business Day after the Effective Date, pay to the Facility Agent for each Lender an extension fee in an amount which shall have been agreed amongst the Borrower and the Lenders prior to the Renewal Decision Date.
- (d) If any Lender or the Federal/State Guarantors decline to agree to or vetoes the Extension, the Borrower shall, on the Termination Date, repay in full the Loans.
- (e) A Renewal Request is irrevocable and may not be withdrawn.

## 7. PREPAYMENT AND CANCELLATION

### 7.1 Illegality

- (a) A Lender must notify the Facility Agent promptly if it becomes aware that it is unlawful in any applicable jurisdiction for that Lender (an “**Affected Lender**”) to perform any of its obligations under a Finance Document or to fund or maintain its share in any Loan to the Borrower.
- (b) After notification under paragraph (a) above and upon the Facility Agent promptly notifying the Borrower:
  - (i) the Borrower must repay or prepay the share of the Affected Lender in each Loan made to it on the date specified in paragraph (c) below; and
  - (ii) the Commitment of the Affected Lender in the relevant Facility will be immediately cancelled.
- (c) The date for repayment or prepayment of an Affected Lender’s share in a Loan will be the earliest of the following dates:
  - (i) the last day of the Interest Period for that Loan occurring after the Facility Agent has notified the Borrower;
  - (ii) the date specified by the Affected Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law); and
  - (iii) the next Repayment Date.
- (d) Upon the occurrence of the events set out in paragraphs (a) and (b) above, so long as:
  - (i) no Event of Default shall have occurred and be continuing; and
  - (ii) the Borrower has obtained a commitment from another Lender or bank, financial institution, trust, fund or other entity which intends to become a Party in accordance

- with Clause 22 (*Changes to the Lenders*) that is a Qualifying Lender (an “**Eligible Transferee**”) to purchase at par the Affected Lender’s Loans and assume the Affected Lender’s Commitments and all other obligations of the Affected Lender under the relevant Finance Documents,
- the Borrower may request of the Affected Lender, and the Affected Lender shall in good faith consider such request, that it transfer all of its Loans and Commitments to such Eligible Transferee in accordance with Clause 22.5 (*Procedure for Transfer*); **provided that**, prior to or concurrently with such replacement:
- (iii) the Borrower or the Eligible Transferee shall have paid to the Affected Lender all amounts due to it under this Agreement;
  - (iv) the Borrower or the Eligible Transferee shall have paid to the Facility Agent the transfer fee of two thousand (2,000) Euro required under Clause 22.3 (*Assignment and Transfer Fee*); and
  - (v) all the requirements for such transfer set out in Clause 22.5 (*Procedure for Transfer*) shall have been fulfilled.

## 7.2 **Mandatory Prepayment from Asset Disposals**

- (a) Subject to paragraphs (b) and (c) below, the Borrower shall ensure that the Net Proceeds arising from the disposal of any asset (including Equipment) by the Borrower are paid to the Facility Agent promptly upon the receipt and applied in prepayment of the Outstandings in accordance with Clause 7.5 (*Application of Prepayments*).
- (b) Paragraph (a) shall not apply to Net Proceeds arising from any disposal referred to in paragraph (a) above:
  - (i) to the extent that such Net Proceeds are promptly upon receipt re-invested in:
    - (A) similar or like assets (including Equipment) of a comparable or superior quality, type or value in the ordinary course of business; or
    - (B) other capital expenditure provided in the Business Plan (as modified by subsequent Management Plans),within a period of one hundred and eighty (180) days from the date of receipt of such Net Proceeds by the Borrower; **provided however**, that the Borrower shall be deemed to have applied Net Proceeds in accordance with this Clause 7.2 prior to the expiration of such one hundred and eighty (180) days if and to the extent it has presented to the Facility Agent one or more *bona fide* purchase orders for property or assets to be used in connection with the Project;
  - (ii) to the extent arising from Permitted Disposals; or
  - (iii) if the Net Proceeds per disposal do not exceed ten million (10,000,000) Euro (or its equivalent in another currency on the date of such disposal) or, when aggregated with the Net Proceeds received from any other disposals of assets made in the immediately preceding twelve (12) calendar month period (excluding the Net Proceeds from disposals falling within sub-paragraphs (i) or (ii) above), do not exceed thirty million (30,000,000) Euro (or its equivalent in another currency on date of such disposals).

- (c) The Borrower shall be entitled, during the period of one hundred and eighty (180) days from the date of receipt of such Net Proceeds, to apply such Net Proceeds in accordance with paragraph (b)(i) above. Any amounts not so applied during such one hundred and eighty (180) day period shall thereafter be paid to the Facility Agent and applied in prepayment of the Outstandings in accordance with Clause 7.5 (*Application of Prepayments*).

#### 7.3 **Mandatory Prepayment from Insurance Proceeds**

- (a) Subject to paragraphs (b) and (c) below, the Borrower shall ensure that any Insurance Proceeds received by it are paid to the Facility Agent promptly upon the receipt of such Insurance Proceeds and applied in prepayment of the Outstandings in accordance with Clause 7.5 (*Application of Prepayments*).
- (b) Paragraph (a) shall not apply to any Insurance Proceeds unless the Insurance Proceeds exceed five million (5,000,000) (or its equivalent in another currency upon the date of their receipt) or, when aggregated with the Insurance Proceeds received by it from claims made in the immediately preceding twelve (12) calendar month period (excluding the Insurance Proceeds from disposals falling within paragraphs (c) below), exceed twenty-five million (25,000,000) Euro (or its equivalent in another currency upon the date of their receipt).
- (c) Paragraph (a) shall not apply to any Insurance Proceeds to the extent that such Insurance Proceeds are applied towards:
- (i) the replacement and/or reinstatement of the assets with similar or like assets (including Equipment) of a comparable or superior quality, type or value and/or repair of the assets in respect of which the relevant insurance claim was made (or to refinance any expenditure incurred in the replacement, reinstatement and/or repair of such assets); or
  - (ii) other capital expenditure provided in the Business Plan (as modified by subsequent Management Plans),
- in either case, within a period of one hundred and eighty (180) days from the date of receipt of such Insurance Proceeds by the Borrower (or the Borrower has entered into binding agreements to apply such Insurance Proceeds within such one hundred and eighty (180) day period).
- (d) The Borrower shall be entitled, during the period of one hundred and eighty (180) days from the date of its receipt of such Insurance Proceeds, to apply such Insurance Proceeds in accordance with paragraph (c) above. Any sums not so applied during the one hundred and eighty (180) day period shall thereafter be paid to the Facility Agent and applied in prepayment of the Outstandings in accordance with Clause 7.5 (*Application of Prepayments*).

#### 7.4 **Mandatory Prepayment from the Escrow Account**

On the date falling twelve (12) Months after the end of the Availability Period, any and all sums remaining in the Escrow Account shall be immediately applied in prepayment of the Outstandings in accordance with Clause 7.5 (*Application of Prepayments*), and the Facility Agent shall be entitled to take all action necessary to effect such application.

---

**7.5 Application of Prepayments**

- (a) Any amounts paid to the Facility Agent in accordance with:
- (i) Clause 7.2 (*Mandatory Prepayment from Asset Disposals*) and Clause 7.3 (*Mandatory Prepayment from Insurance Proceeds*) shall be applied in prepayment of the Outstandings in inverse order of maturity; and
  - (ii) Clause 7.4 (*Mandatory Prepayment from the Escrow Account*) shall be applied in prepayment of the Outstandings on a *pro rata* basis.
- (b) Any mandatory prepayment of the Loans in accordance with this Clause 7 shall:
- (i) firstly, be applied to outstanding Loans in the order provided therefor in the applicable provision of this Clause 7; and
  - (ii) secondly, reduce (and there shall be a corresponding cancellation in) the Available Facility.

Any cancellation, except in the case of a cancellation pursuant to Clause 7.1 (*Illegality*) or Clause 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*), shall reduce the Commitments of the Lenders rateably. No amount so cancelled may be reborrowed.

**7.6 Date for Prepayment**

If the provisions of Clause 7.1 (*Illegality*) (subject to the limitations of paragraph (c) of Clause 7.1) to Clause 7.3 (*Mandatory Prepayment from Insurance Proceeds*) (inclusive) would require the prepayment of a Loan otherwise than on the last day of an Interest Period relating to that Loan, the Borrower may, by written notice to the Facility Agent (to be received not less than five (5) Business Days prior to the date on which such prepayment would be required to be made (but for this Clause 7.6)), request that the amount of such prepayment be applied by the Facility Agent in prepayment of the relevant Loan on the last day of the then current Interest Period relating to that Loan.

**7.7 Voluntary Prepayment of the Loans**

- (a) Effective from and after the date of Closing, the Borrower may prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the relevant Loan by a minimum amount of seven and one half million (7,500,000) Euro and represents an integral multiple of two and one half million (2,500,000) Euro, or, if less, the remaining amount of that Loan) on the last day of any Interest Period applicable to such Loan, upon at least ten (10) Business Days' irrevocable written notice to the Facility Agent and specifying the principal amount of such prepayment and the Business Day on which such prepayment shall occur, upon:
- (i) the payment of the prepayment fee set out in Clause 7.8 (*Prepayment Fee*); and
  - (ii) the payment of all accrued but unpaid interest in respect of the principal amount of the Loan prepaid.

- (b) Any prepayment under this Clause 7.7 shall be immediately applied in satisfaction of the Outstandings on a *pro rata* basis.

**7.8 Prepayment Fee**

- (a) If the Borrower prepays for any reason (whether voluntarily or otherwise) any of the outstanding Loans prior to the scheduled date on which such principal amount falls due, the Borrower shall pay to the Facility Agent, for the account of the Lenders, a prepayment fee determined in accordance with the following table; **provided that**, no such prepayment fee will be required in respect of a supplemental repayment pursuant to paragraph (a) of Clause 6.2 (*Supplemental Repayment and Supplemental Cash Reserves*) or a prepayment pursuant to Clause 7.1 (*Illegality*):

| <u>Period during which prepayment occurs</u>   | <u>Prepayment fee</u>   |
|--|---|
| On or prior to the first anniversary of the Utilisation Date of the applicable Loan                      | [***] <i>per cent.</i> of the principal amount of the Loan(s) prepaid |
| after the first but on or prior to the second anniversary of the Utilisation Date of the applicable Loan | [***] <i>per cent.</i> of the principal amount of the Loan(s) prepaid |
| after the second anniversary of the Utilisation Date of the applicable Loan                              | [***] <i>per cent.</i> of the principal amount of the Loan(s) prepaid |

- (b) For the purposes of paragraph (a) above, the Utilisation Date of any Loans drawn under the Facility and paid into the Escrow Account shall be the date on which such funds are withdrawn from the Escrow Account; **provided that**, the total prepayment fee due in respect of any such Loan will be reduced by the aggregate amount of Margin paid in respect of that Loan while held in the Escrow Account.

**7.9 Voluntary Cancellation**

- (a) Effective from and after the date of Closing, the Borrower may cancel the whole or any part of the Available Facility (being a minimum amount of seven and one half million (7,500,000) Euro and representing an integral multiple of two and one half million (2,500,000) Euro or, if less, the remaining amount of the Available Facility) upon at least ten (10) Business Days' irrevocable written notice to the Facility Agent and upon payment of the cancellation fee set out in paragraph (b) below. Any amount so cancelled may not be reinstated.
- (b) If the Available Facility is cancelled at any time (whether pursuant to this Clause 7.9 or otherwise), the Borrower shall pay to the Facility Agent, for the account of the Lenders, a cancellation fee determined in accordance with the following table; **provided that**, no such cancellation fee will be required in respect of any portion of the Available Facility that is cancelled pursuant to Clause 7.1 (*Illegality*):

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004.*

| <u>Period during which cancellation occurs</u>            | <u>Cancellation fee</u>  |
|---|--|
| Following the date of Closing but prior to 1 January 2005 | [***] <i>per cent.</i> of the principal amount of the Available Facility cancelled |
| on or after 1 January 2005 but prior to 1 January 2006    | [***] <i>per cent.</i> of the principal amount of the Available Facility cancelled |
| on or after 1 January 2006                                | [***] <i>per cent.</i> of the principal amount of the Available Facility cancelled |

(c) Any cancellation under this Clause 7.9 shall reduce the Commitments of the Lenders rateably.

7.10 **Right of Repayment and Cancellation in Particular Circumstances**

(a) If:

(i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 12.2 (*Tax Gross-Up*); or

(ii) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax Indemnity*) or Clause 13.1 (*Increased Costs*); or

(iii) any Lender notifies the Facility Agent of its Minimum Reserve Cost,

the Borrower may, whilst (in the case of paragraphs (i) and (ii) above) the circumstance giving rise to the requirement or indemnification continues or (in the case of paragraph (iii) above) that Minimum Reserve Cost is greater than zero, give the Facility Agent at least seven (7) Business Days' prior written notice of cancellation of the Commitments of that Lender (the "**Subject Lender**") and its intention to procure the repayment of the Subject Lender's participation in the Loans.

(b) On receipt of a notice referred to in paragraph (a) above, any Available Commitment of the Subject Lender shall immediately be reduced to zero.

(c) On the last day of each Interest Period which ends after the Borrower has given notice under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the Subject Lender's participation in the Loan to which such Interest Period relates.

(d) Upon the occurrence of the events set out in this Clause 7.10, so long as:

(i) no Event of Default shall have occurred and be continuing; and

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004.*



- (ii) the Borrower has obtained a commitment from another Lender or bank, financial institution, trust, fund or other entity which intends to become a Party in accordance with Clause 22 (*Changes to the Lenders*) that is a Qualifying Lender (an “**Eligible Transferee**”) to purchase at par the Subject Lender’s Loans and assume the Subject Lender’s Commitments and all other obligations of the Subject Lender under the relevant Finance Documents,

the Borrower may request of the Subject Lender, and the Subject Lender shall in good faith consider such request, that it transfer all of its Loans and Commitments to such Eligible Transferee in accordance with Clause 22.5 (*Procedure for Transfer*); **provided that**, prior to or concurrently with such replacement:

- (iii) the Borrower or the Eligible Transferee shall have paid to the Subject Lender all amounts due to it under this Agreement;
- (iv) the Borrower or the Eligible Transferee shall have paid to the Facility Agent the transfer fee of two thousand (2,000) Euro required under Clause 22.3 (*Assignment and Transfer Fee*); and
- (v) all the requirements for such transfer set out in Clause 22.5 (*Procedure for Transfer*) shall have been fulfilled.

7.11 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and subject to Break Costs, if any.
- (c) The Borrower may not reborrow any part of the Facility that has been prepaid or repaid.
- (d) Subject to applicable laws, the Borrower shall not repay or prepay all or any part of the Loans and it shall not cancel all or any part of the Commitments, except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) Any reduction or cancellation of a Commitment under this Clause 7 shall reduce the Total Commitments by the amount of such reduction or cancellation.

SECTION 5

COSTS OF UTILISATION

8. INTEREST

8.1 Calculation of Interest

The rate of interest on each Loan for each Interest Period is the percentage rate *per annum* which is the aggregate of the applicable:

- (a) Margin;
- (b) EURIBOR; and
- (c) Minimum Reserve Cost, if any,

**provided however**, that for Loans the proceeds of which are disbursed into the Escrow Account, interest on that portion of the Loans the proceeds of which are held in the Escrow Account from time to time shall be determined based on one half (50%) of the Margin *per annum*.

8.2 Margin Ratchets

- (a) Save as provided in paragraph (b) below, the Margin, in relation to a Loan, shall be the percentage rate *per annum* specified in the definition of “**Initial Margin**” in Clause 1.1 (*Definitions*).
- (b) Save as provided in Clause 8.4 (*No Margin Ratchets in Events of Default*) and in accordance with Clause 8.3 (*Margin Changes*), if after six (6) Months from the Signing Date the Credit Rating falls within any of the ranges specified in Column A and Column B below, the Margin, in respect of all Loans, shall be the determined by reference to the lowest such Credit Rating allocated by either Moody’s or Standard & Poor’s as set out in the table below:

| Column A<br>Moody’s Rating | Column B<br>Standard & Poor’s Rating | Column C<br>Margin <i>per annum</i> |
|----------------------------|--------------------------------------|-------------------------------------|
| lower than B3              | lower than B-                        | [***]                               |
| B3                         | B-                                   | [***]                               |
| B2                         | B                                    | [***]                               |
| B1                         | B+                                   | [***]                               |
| Ba3                        | BB-                                  | [***]                               |
| Ba2                        | BB                                   | [***]                               |
| Ba1                        | BB+                                  | [***]                               |
| Baa3 or better             | BBB- or better                       | [***]                               |

\*\*\* Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .

**provided that**, the Initial Margin shall apply to all periods until and including the first (1<sup>st</sup>) anniversary of the Signing Date; and **further provided that**, in respect of all other periods, in the event that neither Credit Rating is available for more than thirty (30) days, the Margin as calculated above will convert to [\*\*\*] *per cent. per annum* (the “**Safety Margin**”) with retrospective effect from the date on which both Credit Ratings were no longer available.

### 8.3 **Margin Changes**

- (a) Save as provided in this Clause 8.3 and Clause 8.4 (*No Margin Ratchets in Events of Default*), any change in the Margin provided for by Clause 8.2 (*Margin Ratchets*) shall take effect, in relation to all existing and future Loans during the period:
- (i) from (and including) the date on which the next subsequent Interest Period commences immediately after the conclusion of the current Interest Period during which the Facility Agent has received information of the change in Credit Rating or been informed of the same by the Borrower in accordance with paragraph (a) of Clause 18.4 (*Information: Miscellaneous*),
  - (ii) until (but excluding) the date on which the next subsequent Interest Period commences immediately after the conclusion of the Interest Period during which the Facility Agent receives information of a further change in the Credit Rating or is informed of the same by the Borrower in accordance with paragraph (a) of Clause 18.4 (*Information: Miscellaneous*).
- (b) If at any time:
- (i) the Margin has been changed pursuant to this Clause 8.3; and
  - (ii) the Facility Agent thereafter discovers that the information or notification that it has received on the Credit Rating is inaccurate and that such change should not have been made,

that change shall be reversed with retrospective effect, the Margin applicable to the Facility shall be that justified by the correct Credit Rating, amounts of interest calculated by reference to the changed Margin (whether or not already paid) shall be recalculated by reference to the Margin applicable to such correct Credit Rating and the Borrower or the Lenders, as the case may be, shall be required to make a payment to the Facility Agent, in such amounts as the Facility Agent may specify, to cover any difference in amounts of interest which should have actually been received by the Lenders following any recalculation. The Facility Agent’s determination of any such difference shall, save in the case of manifest error, be conclusive and the Facility Agent shall provide the Borrower and the Lenders with reasonable details of the calculation of such difference in Margin.

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .*

---

**8.4 No Margin Ratchets in Events of Default**

- (a) No reduction in the Margin provided for by Clause 8.2 (*Margin Ratchets*) shall take effect immediately from the date determined by the Facility Agent as being the date on which an Event of Default has occurred or come into existence. The Margin shall thereafter immediately convert to the Safety Margin (if it is not already) until the date specified by the Facility Agent as being the date on which it has been demonstrated to its reasonable satisfaction that such Event of Default is no longer continuing. The Margin shall thereafter be determined in accordance with Clause 8.2 (*Margin Ratchets*) on the basis of the Credit Rating then applicable.
- (b) The Facility Agent shall promptly notify the Lenders and the Borrower of any determination that an Event of Default has occurred or exists or, as the case may be, that it has been demonstrated to its reasonable satisfaction that such Event of Default is no longer continuing.

**8.5 Payment of Interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than three (3) Months, on the dates falling at three (3) monthly intervals after the first day of the Interest Period).

**8.6 Default Interest and Penalty**

- (a) The Borrower shall be in payment default (*Verzug*) if it fails to pay any amount (other than in payment of interest and fees, other than the commitment fees under Clause 11.1 (*Commitment Fee*)) payable by it under a Finance Document on its due date. On the occurrence of such a payment default (*Verzug*), interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate one (1) *per cent.* higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 8.6 shall be immediately payable by the Borrower on demand by the Facility Agent.
- (b) If the Borrower fails to pay any amounts in payment of interest or fees under a Finance Document on its due date, the Borrower shall pay liquidated damages to the Facility Agent for the account of the relevant Lenders in an amount determined by the Facility Agent as being, in respect of the period from the due date of payment until receipt by the Facility Agent of the relevant amount, the equivalent of interest at a rate determined in accordance with paragraph (a) above applied to the relevant overdue amount.
- (c) In the circumstances described in paragraph (b) above, the Borrower shall be entitled to demonstrate that the damage actually suffered by the Lenders is inferior to the amounts determined in accordance therewith, and the Lenders shall be entitled to prove and claim for any higher damage.

**8.7 Notification of Rates of Interest**

The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

---

**9. INTEREST PERIODS**

**9.1 Selection of Interest Periods**

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 9.2 (*Changes to Interest Periods*), be one (1) Month.
- (d) Subject to this Clause 9, the Borrower may select an Interest Period of one (1), two (2), or three (3) Month(s) or any other period agreed between the Borrower and the Facility Agent (acting on the instructions of all the Lenders). In addition, the Borrower may select an Interest Period of a period of less than one (1) Month, if necessary to ensure that there are sufficient Loans (with an aggregate amount equal to or greater than the relevant Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.
- (e) Subject to Clause 6.3 (*Extension of Termination Date*) and Clause 9.3 (*Non-Business Days*), an Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date relating to such Loan or (if already made) on the last day of its preceding Interest Period.

**9.2 Changes to Interest Periods**

- (a) Prior to determining the interest rate for a Loan, the Facility Agent may shorten an Interest Period for any Loan to ensure that there are sufficient Loans (with an aggregate amount equal to or greater than the relevant Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.
- (b) If the Facility Agent makes any of the changes to an Interest Period referred to in this Clause 9.2, it shall promptly notify the Borrower and the Lenders.

**9.3 Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

**9.4 Consolidation and Division of Loans**

- (a) Subject to paragraph (b) below, if two or more Interest Periods end on the same date, the Loans in relation thereto will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.
- (b) Subject to Clause 4.4 (*Maximum Number of Loans*) and Clause 5.3 (*Currency and Amount*), if the Borrower requests in a Selection Notice that a Loan be divided into two or more

Loans, that Loan will, on the last day of its Interest Period, be so divided with amounts specified in that Selection Notice, being an aggregate amount equal to the amount of the Loan immediately before its division, having taken into account any repayment to be made on that day.

## **10. CHANGES TO THE CALCULATION OF INTEREST**

### **10.1 Absence of Quotations**

Subject to Clause 10.2 (*Market Disruption*), if EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

### **10.2 Market Disruption**

(a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the rate *per annum* which is the sum of:

- (i) the Margin;
- (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate *per annum* the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
- (iii) the Minimum Reserve Cost, if any, applicable to that Lender's participation in the Loan.

(b) In this Agreement "**Market Disruption Event**" means:

- (i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Facility Agent to determine EURIBOR for the relevant currency and Interest Period; or
- (ii) before close of business in Luxembourg on the Quotation Day for the relevant Interest Period, the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed thirty-five (35) *per cent.* of that Loan) that the cost to it of obtaining matching deposits in the European interbank market would be in excess of EURIBOR.

### **10.3 Alternative Basis of Interest or Funding**

(a) If a Market Disruption Event occurs and the Facility Agent or the Borrower so requires, the Borrower and the Facility Agent must enter into negotiations for a period of not more than 30 days with a view to agreeing an alternative basis for determining the rate of interest and/or funding for the affected Loan and any future Loan. The Facility Agent shall inform the Lenders within such thirty (30) day period of any proposal for an alternative basis, to the extent practicable.

- (b) Any alternative basis agreed pursuant to paragraph (a) above will be, with the prior consent of all the Lenders, binding on all the Parties. The Lenders shall use reasonable endeavours to respond to a request for consent by the Facility Agent under this Clause within three (3) Business Days of a request.

**10.4 Break Costs**

- (a) The Borrower shall, within three (3) Business Days of demand by the Facility Agent acting on behalf of a Lender, pay to the Facility Agent on demand for the account of that Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

**11. FEES**

**11.1 Commitment Fee**

- (a) The Borrower shall pay to the Facility Agent (for the account of each Lender) a commitment fee in Euro computed at the rate of:
- (i) [\*\*\*] *per cent.* of the applicable Margin on that Lender's Available Commitment under the Facility until evidence satisfactory to the Facility Agent has been provided that all Authorisations (including, without limitation, the EU Notification Approval) have been received and the Federal/State Guarantee has been issued by the Federal/State Guarantors; and
- (ii) thereafter, [\*\*\*] *per cent.* of the Margin on that Lender's Available Commitment under the Facility.
- (b) Accrued commitment fees are payable on:
- (i) the last day of each successive period of three (3) Months which ends during the Availability Period;
- (ii) on the last day of the Availability Period; and
- (iii) if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

**11.2 Agency Fee**

The Borrower shall pay to the Facility Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004.*

---

11.3 **Security Agent Fee**

The Borrower shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.

11.4 **Extension Fee**

In the event of an Extension under Clause 6.3 (*Extension of Termination Date*), an extension fee will be payable by the Borrower as provided in that Clause.



SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS UP AND INDEMNITIES

12.1 Definitions

(a) In this Clause 12:

“**Protected Party**” means a Lender that is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of, any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

“**Tax Payment**” means an increased payment made by the Borrower to a Lender under Clause 12.2 (*Tax Gross-up*) or a payment under Clause 12.3 (*Tax Indemnity*).

(b) In this Clause 12 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

12.2 Tax Gross-up

(a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower.

(c) If a Tax Deduction is required by law to be made by the Borrower in respect of a payment to a Lender, the amount of the payment due from the Borrower to that Lender shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) The Borrower is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of any payment which is capable of attracting a Tax Deduction, if on the date on which the payment falls due:

(i) the payment relates to a Tax referred to in paragraph (b), subparagraph (i) of Clause 12.3 (*Tax Indemnity*);

(ii) the payment could have been made to the relevant Lender without the Tax Deduction if it was a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date

it became a Lender under this Agreement in (or in the interpretation, administration or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or

- (iii) the Borrower is able to demonstrate that the payment could have been made to that Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below, including timely providing the documents allowing the Borrower to make the payment without a Tax Deduction.
- (e) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.
- (g) A Lender and the Borrower shall co-operate in completing any procedural formalities necessary for the Borrower to obtain authorisation to make a payment to that Lender without a Tax Deduction, and such Lender shall provide to the applicable party or parties on a timely basis the necessary documents allowing the Borrower to make the payment without a Tax Deduction.
- (h) Any difference in the amount which is owed by the Borrower under paragraph (c) above will not be covered by the Federal/State Guarantee. Any such amount which is paid by the Borrower and not recovered by it under Clause 12.4 (*Tax Credit*) is deemed to reduce the principal amount owed by the Borrower in relation to the Federal/State Guarantors.

### 12.3 **Tax Indemnity**

- (a) The Borrower shall (within three (3) Business Days of demand by the Facility Agent) pay to a Protected Party an amount equal to the loss, liability or cost that that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of withholding Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Lender:
    - (A) under the law of the jurisdiction in which that Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Lender is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if in either case that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or

- (ii) to the extent a loss, liability or cost:
  - (A) is compensated for by an increased payment under Clause 12.2 (*Tax Gross-up*); or
  - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax Gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax Gross-up*) applied.
- (c) A Protected Party making, or intending to make, a claim pursuant to paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 12.3, notify the Facility Agent.

#### 12.4 **Tax Credit**

- (a) If the Borrower makes a Tax Payment and the relevant Lender determines that:
  - (i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
  - (ii) that Lender has obtained, utilised and retained that Tax Credit, or could have obtained, utilised or retained that Tax Credit had it claimed such benefit according to the applicable procedural rules within the provisions of paragraph (c) below,the Lender shall pay an amount to the Borrower which that Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower. Upon the request of the Borrower, the relevant Lender will use its reasonable endeavours (to the extent commercially practicable and legally permitted) to recover such Tax Credit.
- (b) If such a Tax Credit by reference to which a Lender has made a payment to the Borrower under paragraph (a) above is subsequently disallowed or cancelled, the Borrower must reimburse any payment made under paragraph (a) above to the relevant Lender.
- (c) If the Borrower makes a Tax Payment, the relevant Lender shall take reasonable steps to claim a Tax Credit unless in the opinion of that Lender the making of such claim might have an adverse effect on its business, operations, property, condition or prospects (financial or otherwise). The Borrower shall bear any costs incurred by a Lender in making such a claim.

#### 12.5 **Stamp Taxes**

The Borrower shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### 12.6 **Value Added Tax**

- (a) All consideration payable under a Finance Document by an Obligor to a Finance Party shall be deemed to be exclusive of any VAT. If any VAT is chargeable, the Borrower shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT.

- (b) Where a Finance Document requires an Obligor to reimburse a Finance Party for any costs or expenses (which for the avoidance of doubt does not include any fees payable to a Finance Party pursuant to Clause 11 (*Fees*)), the Borrower shall also at the same time pay and indemnify that Finance Party against all VAT incurred by that Finance Party in respect of the costs or expenses save to the extent that that Finance Party is entitled to repayment or credit in respect of the VAT.

12.7 **Original Lender's Confirmation**

- (a) Each Original Lender confirms to the Borrower, the Facility Agent and each Mandated Lead Arranger on the date of this Agreement that it is a Qualifying Lender.
- (b) A Lender shall promptly give notice to the Borrower (through the Facility Agent) if it becomes aware of any change in the position from that set out in paragraph (a) above.

13. **INCREASED COSTS**

13.1 **Increased Costs**

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three (3) Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

- (i) the introduction of or any change in (or in the interpretation or application of) any law or regulation; or
- (ii) compliance with any law or regulation, enacted or made after the Signing Date.

- (b) In this Agreement "**Increased Costs**" means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 **Increased Cost Claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 **Exceptions**

- (a) Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
- (i) attributable to a Tax Deduction required by law to be made by the Borrower;
  - (ii) compensated for by Clause 12.3 (*Tax Indemnity*) (or would have been compensated for under Clause 12.3 (*Tax Indemnity*) but was not so compensated solely because one of the exclusions in paragraph (b) of Clause 12.3 (*Tax Indemnity*) applied);
  - (iii) compensated for by the payment of the Minimum Reserve Cost; or
  - (iv) attributable to the breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a “**Tax Deduction**” has the same meaning given to the term in Clause 12.1 (*Definitions*).

14. **OTHER INDEMNITIES**

14.1 **Currency Indemnity**

- (a) If any sum due from the Borrower under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
- (i) making or filing a claim or proof against the Borrower;
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- the Borrower shall as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 **Other Indemnities**

The Borrower shall, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 26 (*Sharing among the Finance Parties*) (save to the extent such Finance Party is otherwise compensated under this Agreement);

- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) any Loan (or part of any Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

**14.3 Indemnity to the Facility Agent, the Security Agent and the Reporting Agent**

The Borrower shall promptly indemnify the Facility Agent, the Security Agent and the Reporting Agent against any cost, loss or liability incurred by the Facility Agent, the Security Agent or the Reporting Agent (in each case acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

**15. MITIGATION BY THE LENDERS**

**15.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross-Up and Indemnities*) or Clause 13 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another:
  - (i) Affiliate or Facility Office; or
  - (ii) Eligible Transferee pursuant to either paragraph (e) of Clause 7.1 (*Illegality*) or paragraph (d) of Clause 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*).
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

**15.2 Limitation of Liability**

- (a) The Borrower shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it or any Affiliate or Facility Office in relation to paragraph (a)(i) of Clause 15.1 (*Mitigation*).

**16. COSTS AND EXPENSES**

**16.1 Transaction Expenses**

The Borrower shall promptly on demand pay to each Agent the amount of all reasonable and documented costs (excluding the cost of management time of the Agent or the Lenders)

employees) and out-of-pocket expenses (including any reasonable and documented costs and expenses of external legal counsel (limited, until the Signing Date, to one external legal counsel for all the Agents and the Lenders) and any other third party advice) together with any VAT payable in respect thereof incurred by any of them in connection with the evaluation, development, negotiation, preparation, printing, execution and delivery of:

- (a) this Agreement and any other documents referred to herein (including the preparation of the term sheet relating to the Facility and the structuring of the debt financing of the Project); and
- (b) any other Finance Documents executed after the Signing Date.

**16.2 Amendment Costs**

If the Borrower requests an amendment, waiver or consent, the Borrower shall, within three (3) Business Days of demand, reimburse each Agent for the amount of all reasonable and documented costs (excluding the cost of management time of the Agent or the Lenders' employees) and out-of-pocket expenses (including any reasonable and documented costs and expenses of external legal counsel) incurred by each Agent in responding to, evaluating, negotiating or complying with that request or requirement.

**16.3 Enforcement Costs**

The Borrower shall, within three (3) Business Days of demand, pay to each Finance Party the amount of all documented costs and out-of-pocket expenses (including any documented costs and expenses of external legal counsel) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

**16.4 Security Agent's Costs**

The Borrower shall promptly on demand pay to the Security Agent the amount of all reasonable and documented costs (excluding the cost of management time of the Agent or the Lenders' employees) and out-of-pocket expenses (including any reasonable and documented costs and expenses of external legal counsel) incurred by the Security Agent (for its own account and that of any Finance Party) in connection with the administration or release of any of the Transaction Security.

**16.5 Federal/State Guarantors' Costs**

The Borrower will pay to the Federal/State Guarantors any costs in connection with the issue of the Federal/State Guarantee and any costs of any report (*Gutachten*) produced or inspections (*Prüfungen*) carried out in respect of the Federal/State Guarantee by or on behalf of the Federal/State Guarantors.

**16.6 Informing the Borrower**

In respect of Clause 16.1 (*Transaction Expenses*), 16.2 (*Amendment Costs*) and 16.4 (*Security Agent's Costs*), the relevant Agent shall inform the Borrower of its choice of external legal counsel before instructing such external legal counsel.

SECTION 7

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

17.1 Representations and Warranties

- (a) The Borrower makes the representations and warranties set out in this Clause 17 to each Finance Party on the Signing Date.
- (b) The Finance Parties have entered into this Agreement in reliance on these representations and warranties.

17.2 Status

- (a) It is a limited partnership (*KG*) and the General Partner is a limited liability company, each duly established or formed, as the case may be, and validly existing under the law of the jurisdiction of its place of incorporation, establishment or formation.
- (b) It and the General Partner each has the power to own its assets and carry on its business as it is currently being conducted.

17.3 No Winding-Up

Save as otherwise disclosed in writing to the Facility Agent, no administrator, receiver, insolvency trustee, bankruptcy examiner, liquidator or similar officer or official has been appointed with respect to itself or, as far as it is aware, the Guarantor or any of its assets or, as far as it is aware, any of the Guarantor's and (to the best of its knowledge and belief) no petition by a third party or proceeding for any such appointment is pending nor, has any resolution for any such appointment been passed in relation to itself or the Guarantor.

17.4 Binding Obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) and the conditions precedent set forth in the Finance Documents, legal, valid, binding and enforceable obligations.

17.5 Non-Conflict with Other Obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents;
- (c) any agreement or instrument binding upon it or any of its assets,

nor (except as provided in any Security Documents) result in the creation of, or oblige it to create, any Security (other than Permitted Security) over any of its assets.



17.6 **Power and Authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

17.7 **Validity and Admissibility in Evidence**

All Authorisations (not including the EU Notification Approval) required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- (b) to make the Transaction Documents to which it is a party admissible in evidence in Germany; and
- (c) to enable it to create any Security expressed to be created by it by or pursuant to, or as the case may be, any Security expressed to have been created by it and to be evidenced in, any Security Document to which it is a party and to ensure that such Security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect, save for (i) any filings, registrations or notarisations required in relation to the Security Documents, which filings, registrations or notarisations will be made promptly after execution of the relevant documents and in any event within applicable time limits, or (ii) such filings, registrations or notarisations which have been obtained and effected.

17.8 **Governing Law and Enforcement**

The choice of German law as the governing law of the Finance Documents which are expressed to be governed by German law (or, in respect of any Security Document to which it is a party, the choice of the relevant governing law of that Security Document) will be recognised and enforced in Germany.

17.9 **Deduction of Tax**

To the extent that a payment under a Finance Document is made to a Qualifying Lender and such Qualifying Lender has provided all the documentation required under applicable laws and regulations, it is not required under the law of Germany to make any deduction for or on account of Tax from any such payment.

17.10 **No Filing or Stamp Taxes**

Under the law of Germany, it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in Germany or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated therein.

17.11 **No Default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.

- (b) No other event or circumstance is outstanding which constitutes:
- (i) on the Signing Date, any default whatsoever under any other agreement or instrument which is binding on the Borrower or to which its assets are subject; and
  - (ii) thereafter, any material default under any other agreement or instrument which is binding on the Borrower or to which its assets are subject which would amount to an aggregate liability of over five million (5,000,000) Euro arising under such agreement or instrument from such default (save to the extent that any liabilities are being contested in good faith).

17.12 **Information**

- (a) Any written information (excluding that referred to in Clause 17.24 (*Information Memorandum*)) and any financial information (including in relation to the Credit Ratings) provided by it on behalf of itself and/or any member of the Group to any Finance Party in connection with the Transaction Documents was true, accurate and complete in all material respects as at the date it was provided and was not misleading in any material respect.
- (b) To the extent that the information referred to in paragraph (a) above contained any opinions, forecasts, projections and/or conclusions, such opinions, forecasts, projections and/or conclusions were fair, based on reasonable assumptions and were made in good faith; **provided however**, that the Borrower makes no representation or warranty in relation to any information provided by a third party and denoted as such.

17.13 **Good Title to Assets**

- (a) It has, subject to Permitted Security, good title to or valid leases or licences of or is otherwise entitled to use all material assets (including the Equipment acquired as at the date of this representation, but not including Intellectual Property which is subject to the provisions of Clause 17.14 (*Intellectual Property Rights*)) necessary to carry on its business as it is being conducted.
- (b) It has acquired and/or has vested in it:
- (i) title to possess and use the Site; and
  - (ii) access to the Site.

17.14 **Intellectual Property Rights**

- (a) To the best of its knowledge and belief, it has legal rights to use all the Intellectual Property which is material to its business and, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, to the best of its knowledge and belief, it does not, in carrying on its business, infringe any Intellectual Property Rights of any third party in any material respect.
- (b) To the best of its knowledge and belief, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, it has registered and has taken all requisite actions (including payment of fees) required to maintain in full force and effect any registered Intellectual Property Rights owned by it which are material in the context of its business or which are required to be registered under applicable law.

17.15 **Creation of Security**

- (a) It is, or upon the execution (and the fulfilment of any conditions included therein) of the Security Documents to which it is a party will be, subject to any Permitted Security, the absolute owner (*Eigentümer*) of all the material assets over which it purports to create Security by or pursuant to or as evidenced in the Security Documents.
- (b) Each Security Document to which it is or is to be a party creates, or upon such execution (and the fulfilment of any conditions included therein) will create, the Security which that Security Document purports to create or, if that Security Document purports to evidence Security, accurately evidences, or upon such execution (and the fulfilment of any conditions included therein) will so evidence, Security which has been validly created.
- (c) The partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower which are or are to be subject to any Security created by or pursuant to, or evidenced in, any of the Security Documents are all fully paid as at the date of first Utilisation and the constitutional documents of the Borrower do not and could not restrict or inhibit (whether absolutely, partially, under a discretionary power or otherwise) any transfer of such partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower upon or pursuant to any enforcement of any of the Security Documents to which it is or is to be a party.

17.16 **Insurance**

- (a) It maintains or is the beneficiary of the Required Insurance on and in relation to the Site, its business and assets and maintains or is the beneficiary of such other insurance with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany.
- (b) There has been no omission to disclose a fact which must be disclosed by applicable law or pursuant to contract, which might in either case entitle an insurer to avoid or otherwise reduce its liability under any policy relating to insurance as referred to in paragraph (a) above.

17.17 **Pari Passu Ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to creditors or certain types of creditors generally.

17.18 **No Proceedings Pending or Threatened**

Except as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, no material litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency in relation to an Obligor, the Project or any Transaction Document which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or (to the best of its knowledge and belief) threatened against it.

17.19 **Environmental Compliance**

- (a) Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, it has obtained all requisite Environmental Licences as then required in relation to the Project and has at all times, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, complied in all material respects with:
- (i) all applicable Environmental Laws as then required in relation to the Project;
  - (ii) the terms and conditions of such Environmental Licences; and
  - (iii) all other covenants, conditions, restrictions and agreements binding on the Borrower directly or indirectly concerned with any Environmental Contamination in relation to the Project,
- in each case where failure to do so would or might reasonably be expected to have a Material Adverse Effect.
- (b) Save otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, there are to its knowledge no events or circumstances that have occurred which may prevent or interfere with the compliance in any material respect in the future of it with all applicable Environmental Laws required in relation to the Project, the terms of all Environmental Licences referred to in paragraph (a) above and all covenants, conditions, restrictions and agreements referred to in such paragraph.

17.20 **Environmental Claims**

Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, no Environmental Claim in relation to the Project has been started or (to the best of its knowledge and belief) threatened against it which may reasonably be expected to have a Material Adverse Effect.

17.21 **Taxation**

- (a) It has duly and punctually paid and discharged all Taxes imposed upon it or its assets and due within the time period allowed without incurring penalties; save to the extent that:
- (i) payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes; and
  - (iii) payment can be lawfully withheld.
- (b) It is not materially overdue in the filing of any Tax returns.
- (c) No claims are being asserted nor is it aware of any claims that are reasonably likely to be asserted against it with respect to Taxes which might have a Material Adverse Effect.

17.22 **No Indebtedness**

Save for any Permitted Indebtedness, it has:

- (a) no Financial Indebtedness; and
- (b) no other indebtedness, except for any which has been incurred in the ordinary course of its business.

17.23 **No Security**

Save for any Permitted Security:

- (a) no Security exists over all or any of its assets; and
- (b) no arrangement or transaction as described in paragraph (b) of Clause 20.3 (*Negative Pledge*) has been entered into by it and is outstanding.

17.24 **Information Memorandum**

- (a) The information in the Information Memorandum was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect and did not omit any material information relating to the Borrower or the Project as at that time.
- (b) Save as otherwise disclosed in writing to the Facility Agent:
  - (i) nothing has occurred or been omitted from the Information Memorandum; and
  - (ii) no information has been given or withheld by the Borrower or on its behalf, since the date of the Information Memorandum that results in the information contained therein being untrue or misleading in any material respect.
- (c) All opinions, forecasts, projections and conclusions contained in the Information Memorandum were fair, based on reasonable assumptions and were made in good faith.
- (d) Notwithstanding anything to the contrary contained in this Clause 17.24:
  - (i) the Borrower makes no representation or warranty in relation to:
    - (A) any information provided by a third party and denoted as such; and
    - (B) such information contained in the “Key Lending Considerations” section of the Information Memorandum; and
  - (ii) in relation to the “Risks and Mitigants” section of the Information Memorandum, the Borrower only makes representations and warranties in relation to factual information set out therein.

17.25 **Base Financial Statements**

- (a) Its Base Financial Statements:
  - (i) were prepared in accordance with German GAAP consistently applied; and
  - (ii) (in the case of quarterly unaudited financial statements) fairly represent the financial condition and operations of the Borrower as at the date to which they were

prepared and during the relevant financial period for which they were prepared, subject to normal year end adjustments, unless expressly disclosed to the Facility Agent in writing to the contrary before the date of this Agreement.

- (b) There has been no Material Adverse Effect since the date on which its latest Base Financial Statements were prepared.

17.26 **Business Plan**

- (a) The Business Plan has been prepared using accounting policies, practices and procedures consistent, in all material respects, with German GAAP as at the date of the Business Plan.
- (b) The information in the Business Plan was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect.
- (c) It does not regard as unreasonable, or to any material extent, unattainable, any of the opinions, forecasts, projections or conclusions set out in the Business Plan as at the date thereof.
- (d) Save as otherwise disclosed in writing to the Facility Agent:
  - (i) nothing has occurred or been omitted from the Business Plan; and
  - (ii) no information has been given or withheld by the Borrower or on its behalf,since the date of the Business Plan that results in the information contained therein being untrue or misleading in any material respect; **provided however**, the Borrower makes no representation or warranty in relation to any information provided by a third party and denoted as such.
- (e) All the opinions, forecasts, projections and conclusions contained in the Business Plan were fair, based on reasonable assumptions and were made in good faith.

17.27 **Management Plans**

- (a) The information in the most recent Management Plan was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect.
- (b) It regards (as at the date that the most recent Management Plan is delivered to the Facility Agent) as neither unreasonable, nor to any material extent unattainable, any of the opinions, forecasts, projections or conclusions set out in that Management Plan.
- (c) Save as otherwise disclosed in writing to the Facility Agent:
  - (i) nothing has occurred or been omitted from the most recent Management Plan; and
  - (ii) no information has been given or withheld by the Borrower or on its behalf,since the date that the most recent Management Plan was delivered to the Facility Agent that results in the information contained therein being untrue or misleading in any material respect; **provided however**, the Borrower makes no representation or warranty in relation to any information provided by a third party and denoted as such.

- (d) As at the date that the most recent Management Plan was delivered to the Facility Agent, all the opinions, forecasts, projections and conclusions contained therein were fair, based on reasonable assumptions and were made in good faith.
- 17.28 **Change in Business**  
It has not made, or taken any steps to make, any substantial change to the Permitted Business.
- 17.29 **Material Adverse Effect**  
It has not entered into any agreement or obligation:  
(a) which could have a Material Adverse Effect; or  
(b) the performance of which in accordance with its terms would result in a breach of any provision of any Finance Document by either Obligor.
- 17.30 **Material Disclosures**  
The Borrower has disclosed in writing, or by use of websites in accordance with Clause 18.6 (*Use of Websites*), to the Facility Agent all material information in its possession relating to the Project, including all Project Documents and other material agreements.
- 17.31 **Compliance with Laws and Regulations**  
It has at all times complied in all material respects with any law or regulation applicable to it.
- 17.32 **Time for Making Representations and Warranties**  
The Repeating Representations are deemed to be made by the Borrower to each Finance Party by reference to the facts and circumstances then existing (except as otherwise provided therein) on the first Utilisation Date, on the date of each Utilisation Request, on the first day of each Interest Period and, prior to the first Utilisation Date, on each Quarter Date.
- 18. INFORMATION UNDERTAKINGS**
- The undertakings in this Clause 18 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.
- 18.1 **Financial Statements**  
The Borrower shall supply to the Facility Agent and, in the case of paragraph (e) below, to the Reporting Agent in sufficient numbers for all the Lenders and the Federal/State Guarantors:  
(a) as soon as the same become available, but in any event within ninety (90) days after the end of each of its financial years,  
(i) its audited financial statements for that financial year, comprising of its balance sheet, profit and loss account and cash flow statement, together with a description of the business, market and financial developments of the Borrower (*Lagebericht*) as well as the Auditor's audit report; and

- 
- (ii) a report comparing, in the case of the profit and loss account and cash flow statement, actual figures with the Management Plan for that financial year;
  - (b) as soon as the same become available, but in any event within sixty (60) days (or, if in respect of the last Fiscal Quarter of a financial year, within ninety (90) days) after the end of each Fiscal Quarter in each of its financial years, its unaudited unconsolidated financial statements for that Fiscal Quarter, comprising of its balance sheet, profit and loss account and cash flow statement;
  - (c) as soon as the same become available, but in any event within ninety (90) days after the end of each of its financial years, an update of the Borrower's Management Plan, including:
    - (i) a forecast for the remaining tenor of the Facility;
    - (ii) projected EBIT and EBITDA as at the end of each Fiscal Quarter in that financial year; and
    - (iii) significant revisions to the projections set out in the Management Plan for the previous financial year, together with the main operating assumptions relating thereto, for that financial year, based on the financial condition and performance and prospects of the Borrower at such time;
  - (d) commencing on the date of Technical Completion until the later of:
    - (i) the end of the Availability Period; and
    - (ii) the date on which any and all sums deposited into the Escrow Account have been utilised towards the purpose set out in Clause 3 (*Purpose*) and/or for prepayment of the Loans,as soon as the same become available, but in any event within sixty (60) days after the end of each Fiscal Quarter in each of its financial years:
    - (A) statements of sources and uses in the form set out in Schedule 14 (*Form of Statement of Sources and Uses*), including a Relevant Invoices report relating to all Equipment and/or Services acquired by it with a value of one million (1,000,000) Euro (or partial amounts thereof if the relevant aggregate amount of the Relevant Invoices for Equipment and/or Services purchased exceeds one million (1,000,000) Euro or more, in each case reviewed by the Auditors; and
    - (B) reports in the form set out in Schedule 15 (*Form of Status Reports*) setting out production wafer starts/outs per technology, the average development wafer in process and the average line yield for all technologies; and
  - (e) any other financial information reasonably requested by a Lender (through the Facility Agent).



18.2 **Compliance Certificate**

- (a) The Borrower shall supply to the Facility Agent, with each set of financial statements delivered pursuant to paragraphs (a) and (b) of Clause 18.1 (*Financial Statements*), a Compliance Certificate setting out (in reasonable detail), in each case as at the date to which those financial statements were drawn up computations as to compliance with Clause 19 (*Financial Covenants*).
- (b) The Borrower shall ensure that each Compliance Certificate shall be signed by two directors of the Borrower or, as the case may be, by the General Partner and, if required to be delivered with the financial statements delivered pursuant to paragraph (a) of Clause 18.1 (*Financial Statements*), by the Auditors.

18.3 **Requirements as to Financial Statements**

- (a) Each set of financial statements and statements delivered by the Borrower pursuant to paragraph (a) (i) of Clause 18.1 (*Financial Statements*) shall be audited and certified without material qualification by the Auditors.
- (b) Each set of financial statements delivered by the Borrower pursuant to paragraphs (a) and (b) of Clause 18.1 (*Financial Statements*) shall be certified by two directors of the Borrower or, as the case may be, by the General Partner as fairly representing its financial condition as at the date as at which those financial statements were prepared (in the case of unaudited financial statements, subject to normal year end adjustments).
- (c) The Borrower will ensure that each set of financial statements supplied under this Agreement gives (if audited) a true and fair view of, or (if unaudited) fairly represents, its financial condition (consolidated or otherwise) as at the date to which those financial statements were prepared (in the case of unaudited financial statements, subject to normal year end adjustments).
- (d) Each set of financial statements delivered by the Borrower pursuant to paragraphs (a) and (b) of Clause 18.1 (*Financial Statements*) shall be prepared in accordance with the reporting requirements of large companies (*große Kapitalgesellschaften*) within the meaning of section 267 subsection 3 of the Commercial Code (*Handelsgesetzbuch*).
- (e) The Borrower must notify the Facility Agent of any material change to the basis on which its audited or unaudited financial statements are prepared from those applied in the preparation of its Base Financial Statements (including, without limitation, any change in German GAAP but excluding any change resulting only from the exercise by the Borrower of a right to choose an alternative treatment under German GAAP).
- (f) If the Borrower notifies the Facility Agent of a change in accordance with paragraph (e) above, then the Borrower and the Facility Agent shall enter into negotiations in good faith for a period of not more than thirty (30) days with a view to agreeing:
  - (i) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Agreement; and
  - (ii) if so, any amendments to this Agreement (including appropriate changes to the financial covenants set out in Clause 19.2 (*Minimum Tangible Net Worth*) to Clause 19.4 (*Loan to Fixed Asset Value*) (inclusive)) and applicable definitions which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms, and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.

- 
- (g) The Borrower shall provide the Facility Agent with details of any material changes in the projections delivered under paragraph (c) of Clause 18.1 (*Financial Statements*) as soon as reasonably practicable after it decides to make or makes any such change.

18.4 **Information: Miscellaneous**

The Borrower shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests) the following, in each case in respect of the Borrower (unless otherwise noted):

- (a) all material documents dispatched by the Borrower to its creditors generally, or to a class of its creditors generally, at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower and which might, if adversely determined, reasonably be expected to involve potential or alleged liability in excess of one million (1,000,000) Euro (or its equivalent in other currencies on the date of their determination);
- (c) promptly upon becoming aware of them, the details of any insurance claims, claims made under the Project Documents or material changes to the Project which might reasonably be expected to involve potential or alleged liability of the Borrower in excess of five million (5,000,000) Euro (or its equivalent in other currencies on the date of their being determined or made);
- (d) promptly upon becoming aware of them, any material conflicts or breaches of any law or regulation applicable to it;
- (e) promptly upon becoming aware of them, the details of any material collective labour dispute which is current, threatened or pending against the Borrower;
- (f) promptly upon becoming aware of them, the details of any change in the Credit Rating or in the rating of the Facility (if any) or in the published outlook of either;
- (g) promptly upon the Borrower becoming aware of any such filing, notice of any SEC filings by the Guarantor;
- (h) promptly, upon receipt thereof by the Borrower:
  - (i) periodic technical progress reports, including, copies of reports relating to “Fab Construction Weathertight” and “Clean Room Ready for Equipment” as received by the Borrower from the Project Engineer; and
  - (ii) a copy of the confirmation of “first silicon out” as provided by the Technical Adviser;
- (i) promptly, details of any changes to the Borrower’s, the Guarantor’s, the General Partner’s and/or (upon becoming aware of it) the Second General Partner’s accounting periods and all changes of the Borrower’s, the General Partner’s and/or the Second General Partner’s articles of association or equivalent constitutional documents;

- (j) promptly, details of any material events or circumstances affecting its business (*wesentliche Geschäftsvorgänge*) and, promptly at the request of the Facility Agent, a report summarising its financial condition and operations;
- (k) promptly, such further information regarding the financial condition, business and operations of the Borrower, the Guarantor, the General Partner and/or (upon becoming aware of it) the Second General Partner as any Finance Party (through the Facility Agent) may reasonably request;
- (l) promptly, the details of any amendments, variations, novations, supplements or terminations of any Transaction Document to which a Finance Party is not a party; and
- (m) promptly upon becoming aware of them, the details relating to any minimum equity contributions under the Partnership Agreement and/or Subordinated Loans under the Subordinated Loan Agreement(s) not having been paid in by a Limited Partner who is not a member of the Group in accordance with the agreed milestones for such contributions,

and shall ensure that senior management is available once a year for the purpose of a meeting with the Lenders and the Facility Agent in relation thereto.

18.5 **Notification of Default**

- (a) The Borrower shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon the Borrower becoming aware of its occurrence.
- (b) Promptly upon a request by the Facility Agent, the Borrower shall supply to the Facility Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.6 **Use of Websites**

- (a) The Borrower may satisfy its obligation under this Agreement to deliver any information (other than the financial statements required to be delivered under Clause 18.1 (*Financial Statements*)) in relation to those Lenders who accept this method of communication (the "**Website Lenders**") by posting this information onto an electronic website designated by the Borrower and the Facility Agent (the "**Designated Website**") if:
  - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the Borrower and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the Borrower and the Facility Agent.
- (b) If any Lender does not agree to the delivery of information electronically then the Facility Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Facility Agent (in sufficient copies for each of any such Lender) in paper form. In any event the Borrower shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

- 
- (c) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Facility Agent.
  - (d) The Borrower shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
    - (i) the Designated Website cannot be accessed due to technical failure;
    - (ii) the password specifications for the Designated Website change;
    - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
    - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
    - (v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.
  - (e) If the Borrower notifies the Facility Agent under paragraph (d)(i) or paragraph (d)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form, unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.
  - (f) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.

**19. FINANCIAL COVENANTS**

The covenants in this Clause 19 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

**19.1 Financial Definitions**

- (a) In this Clause 19:

“**Approved Bank**” means any bank which is an authorised banking institution under applicable legislation and whose short-term debt securities are rated at least P-1 by Moody’s or A-1 by Standard & Poor’s or as the Facility Agent may approve.

“**Cash**” means:

- (i) cash in hand; and

- (ii) any credit balance in Euro or any other currency on any current, savings or deposit account with any Approved Bank that is repayable on demand or upon not more than ninety (90) days' notice.

“**Cash Equivalents**” means:

- (i) debt securities denominated in Euro which are not convertible into any other form of security, rated or issued by any person rated Aa2 or better by Moody's or AA or better by Standard & Poor's and not issued or guaranteed by the Guarantor;
- (ii) debt securities denominated in Euro which are not convertible into any other form of security, rated at least P-1 by Moody's or A-1 by Standard & Poor's and not issued or guaranteed by the Guarantor;
- (iii) certificates of deposit denominated in Euro issued by, and acceptances so denominated by, banking institutions authorised under applicable legislation which at the time of making such issue or acceptances, have outstanding debt securities rated as provided in paragraph (ii) above; and
- (iv) such other securities (if any) as are approved as such in writing by the Facility Agent (acting on the instructions of the Majority Lenders), which, in each case, have no more than twelve (12) Months to final maturity.

“**EBIT**” means, in respect of any Relevant Period, the profit on ordinary activities of the Borrower but:

- (i) before taking into account Interest Payable;
- (ii) before deducting or providing for corporation tax or withholding tax (in each case whether current or deferred) or their equivalents in any Relevant Jurisdiction or any other taxes on income or gains (excluding, for the avoidance of doubt, taxes or duties in respect of sales);
- (iii) before taking into account any extraordinary items (whether positive or negative) but after taking into account all exceptional items (whether positive or negative);
- (iv) after taking into account any amount attributable to the depreciation of tangible assets;
- (v) after taking into account any amount attributable to the amortisation of subsidies, goodwill, intellectual property and other intangible assets; and
- (vi) after taking into account any amount attributable to net write-offs of tangible fixed assets from impairment tests or restructuring measures.

“**EBITDA**” means, in respect of any Relevant Period, EBIT for such Relevant Period before taking into account:

- (i) any amount attributable to the depreciation of tangible assets;
- (ii) any amount attributable to the amortisation of subsidies, goodwill, intellectual property and other intangible assets; and

(iii) any amount attributable to net write-offs of tangible fixed assets from impairment tests or restructuring measures.

“**Fixed Assets**” means the aggregate net book value (based on the Borrower’s latest Fiscal Quarterly or audited annual financial statements, as applicable), as at the date of computation, of the following assets of the Borrower:

- (i) all the property, plant and equipment (including Equipment purchased at such time), excluding the remaining book value of any assets under capital lease agreements in respect thereof;
- (ii) the construction of the Project in progress;
- (iii) the full amount of all down payments up to an amount of two million five hundred thousand (2,500,000) Euro; and
- (iv) the excess, if any, of all Cash balances (and balances of Cash Equivalents) over the sum of:
  - (A) the amount of Minimum Cash;
  - (B) amounts on the Escrow Account;
  - (C) amounts outstanding under the Revolving Credit Agreement;
  - (D) prepayments made under the Cost Plus Reimbursement Agreement (this does not apply to prepayments made when due under the Cost Plus Reimbursement Agreement); and
  - (E) cumulative, accrued distributions to the Borrower’s Limited Partners (excluding capitalised Net Profits) to the extent at such time (x) payable by the Borrower in accordance with the Partnership Agreement prior to the repayment of the Facility in full and (y) permitted to be paid under this Agreement.

“**Interest Payable**” means, in respect of any Relevant Period, the aggregate amount of the interest (including the interest element of leasing and hire purchase payments; but, excluding interest relating to Participations as permitted under paragraph (b)(i) of the definition of “**Permitted Distributions**”), interest accrued (excluding interest on intercompany loans to the extent not payable), commission, fees, discounts and other finance charges of whatsoever nature payable by the Borrower (including any commission, fees, discounts and other finance charges payable by the Borrower under any interest rate hedging arrangement) but after deducting any commission, fees, discounts and other finance charges receivable by the Borrower under any interest rate hedging arrangement.

“**Loan to Fixed Asset Value**” means, the ratio of:

- (a) the amount of Outstandings, less the aggregate amount of any Loans the proceeds of which continue to be deposited in the Escrow Account; to
- (b) Fixed Assets.

---

“**Net Interest Cost**” means Interest Payable, but after deducting any interest receivable or accrued by the Borrower on any Cash or on any Cash Equivalents.

“**Relevant Jurisdiction**” means, in respect of any person, the jurisdiction of the country in which such person is incorporated and, if different, where it is resident or has its principal place of business, and each jurisdiction or state in which it owns or leases property or otherwise conducts its business.

“**Relevant Period**” means each period of twelve (12) months ending on the last day of each of the Borrower’s financial years and/or each period of twelve (12) months that corresponds with four consecutive Fiscal Quarters ending on the Quarter Date on which the relevant calculation falls to be made.

“**Tangible Net Worth**” means at any time the aggregate of the amount paid up or credited as paid up on the contributed capital of the Borrower and the amount standing to the credit of the capital reserve account of the Borrower (including any retained earnings and revenue reserve), based on the latest audited balance sheet of the Borrower but adjusted by:

- (a) adding any Subordinated Loan;
  - (b) adding any contributions under the Participations;
  - (c) adding forty-five (45) *per cent.* of special items with capital surplus portion (*Sonderposten mit Rücklageanteil*) within the meaning of §§ 273 and 247, paragraph 3 of the Commercial Code (*Handelsgesetzbuch*);
  - (d) deducting any capitalised start up and business expansion expenses;
  - (e) deducting any accruals attributable to deferred taxation; and
  - (f) deducting any amount attributable to goodwill or any other intangible assets.
- (b) All accounting expressions which are not otherwise defined in this Agreement shall be construed in accordance with the German GAAP from time to time.

19.2 **Minimum Tangible Net Worth**

The Borrower shall ensure that the amount of Tangible Net Worth on any Quarter Date specified in Column A below shall not be less than the amount set out opposite such Quarter Date in Column B below:

| <u>Column A<br/>(Quarter Date)</u>                                    | <u>Column B<br/>(Tangible Net Worth)<br/>in Euro</u> |
|---|--|
| (date of initial Utilisation to) 31 March 2006                        | 520,000,000  |
| 30 June 2006  | 530,000,000  |
| 30 September 2006   | 530,000,000  |
| 30 December 2006  | 540,000,000  |
| 31 March 2007   | 550,000,000  |
| 30 June 2007  | 550,000,000  |
| 30 September 2007   | 560,000,000  |
| 30 December 2007 and on each Quarter Date thereafter to 31 March 2011 | 570,000,000  |

19.3 **Minimum Interest Cover**

The Borrower shall ensure that the ratio of EBITDA as at the end of any Relevant Period ending on a Quarter Date specified in Column A below to Net Interest Cost in respect of such Relevant Period shall equal or exceed the ratio set out opposite such Quarter Date in Column B below:

| <u>Column A<br/>(Quarter Date)</u>                                | <u>Column B<br/>(Ratio)</u> |
|---|-----------------------------|
| (date of initial Utilisation to) 31 March 2006                    | 2.5:1                       |
| 30 June 2006  | 3.6:1                       |
| 30 September 2006   | 4.1:1                       |
| 30 December 2006  | 4.6:1                       |
| 31 March 2007   | 4.9:1                       |
| 30 June 2007 and on each Quarter Date thereafter to 31 March 2011 | 5.0:1                       |



19.4 **Loan to Fixed Asset Value**

The Borrower shall ensure that the Loan to Fixed Asset Value as at the end of any Relevant Period specified in Column A below shall not exceed the percentage set out opposite such Relevant Period in Column B below:

| <u>Column A<br/>(Relevant Period)</u> | <u>Column B<br/>(Maximum Percentage of Loan to<br/>Fixed Asset Value)</u> |
|---------------------------------------|---|
| up to and including 31 December 2008  | 50%   |
| up to and including 31 December 2009  | 45%   |
| thereafter                            | 40%   |

19.5 **Calculations**

All calculations made for the purposes of the covenants set out in Clause 19.3 (*Minimum Interest Cover*) and Clause 19.4 (*Loan to Fixed Asset Value*) shall be made by reference to the following:

- (a) where the Relevant Period to which such covenant relates ends on, or the Quarter Date to which such covenant relates falls on, the last day of any financial year of the Borrower, the unaudited financial statements of the Borrower for each of the four Fiscal Quarters within that Relevant Period or, as the case may be, the unaudited financial statements of the Borrower for the Fiscal Quarter ending on that Quarter Date, in each case as delivered pursuant to Clause 18 (*Information Undertakings*) or, when so delivered, the audited financial statements of the Borrower for that financial year; and
- (b) where the Relevant Period to which such covenant relates ends on, or the Quarter Date to which such covenant relates falls on, any other day, the unaudited financial statements of the Borrower for each of the four consecutive Fiscal Quarters within that Relevant Period or, as the case may be, the unaudited financial statements of the Borrower for the Fiscal Quarter ending on that Quarter Date, in each case as delivered pursuant to Clause 18 (*Information Undertakings*).

19.6 **Financial Testing**

The financial covenants set out in this Clause 19 shall be tested:

- (a) by reference to each of the financial statements and each Compliance Certificate delivered pursuant to Clause 18.1 (*Financial Statements*) and Clause 18.2 (*Compliance Certificate*); and
- (b) following the first full Fiscal Quarter of the Borrower after the date of Technical Completion,

and, in particular, the financial statements set out in Clause 19.3 (*Minimum Interest Cover*), as against the Borrower's latest financial statements on a four Fiscal Quarter rolling basis (annualised for the first three (3) full Fiscal Quarters after Technical Completion).

20. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 20 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 **Authorisations**

(a) The Borrower shall promptly:

- (i) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (ii) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of Germany to enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence in Germany.

(b) The Borrower shall:

- (i) ensure that it has the right and is duly qualified to conduct its business as it is conducted from time to time in Germany;
- (ii) obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation which is necessary for the conduct of its business in Germany; and
- (iii) upon the Facility Agent's written request supply the Facility Agent with copies of any such Authorisations.

20.2 **Compliance with Laws**

The Borrower shall at all times comply in all material respects with any law or regulation applicable to it.

20.3 **Negative Pledge**

(a) The Borrower shall not create or permit to subsist any Security over any of its assets.

(b) The Borrower shall not:

- (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any member of the Group;
- (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to Permitted Security.

**20.4 Disposals**

- (a) The Borrower shall not enter into any agreement to sell, lease, transfer or otherwise dispose of all or any part of its assets or enter into or permit to subsist any option or other arrangement (save as otherwise permitted by Clause 20.25 (*Treasury Transactions*) or Clause 20.26 (*Hedging*)) whereby any person has the right (whether or not exercisable only on a contingency) to require it to sell or otherwise dispose of all or any part of its assets.
- (b) The Borrower shall not assign or dispose of any material rights or interests under any of the Project Documents or consent to any other party assigning its rights or interests under any of the Project Documents other than under the Security Documents or to a person which is a party to the relevant Project Document where such assignment or disposal is provided for under the original terms of that Project Document.
- (c) Paragraphs (a) and (b) above does not apply to any Permitted Disposal.
- (d) The Borrower will notify the Facility Agent within five (5) Business Days before the disposal of any Equipment whether in a single transaction or a series of transactions where the aggregate market value of such Equipment exceeds five million (5,000,000) Euro (or its equivalent on the date of such disposal).

**20.5 Change of Business**

- (a) The Borrower shall not make, or take any steps to make, any substantial change to the general nature of its business from that of engaging in the Permitted Business.
- (b) The Borrower shall not incur any expenditure other than in the ordinary course of its business or otherwise in accordance with the Project Documents or the Business Plan (as modified pursuant to the applicable Management Plan).

**20.6 Year End**

Commencing 1 January 2004, the Borrower shall ensure that each of its financial years and each Fiscal Quarter in each of its financial years shall end on a Quarter Date, unless such change is permitted by the requirements of Clause 18.3 (*Requirements as to Financial Statements*) and to the extent it complies with the requirements set out therein.

**20.7 Record Keeping**

The Borrower shall:

- (a) keep proper records and books of account in respect of its business in accordance with German GAAP; and
- (b) permit reasonable access to the Facility Agent and/or any professional advisers (who are each bound by professional or other confidentiality obligations) appointed by the Facility Agent to examine its records and books of account.

20.8 **Constitutional Documents**

The Borrower shall not request any change to its constitutional documents or request or permit any change to any Participation Agreement in relation to its partnership interests, without the prior written consent of the Facility Agent, where such change relates to:

- (a) the substitution, the role, the compensation or other rights to receive payments of the General Partner, the Second General Partner or a silent partner;
- (b) the voting rights of partners;
- (c) majority requirements;
- (d) the legal form of the Borrower; or
- (e) restrictions on pledges or transfers of partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations.

20.9 **Preservation of Assets**

The Borrower shall maintain and preserve all of its assets that are necessary in the conduct of the Permitted Business in good working order and condition, ordinary wear and tear excepted.

20.10 **Insurance**

- (a) The Borrower shall maintain the Required Insurance or ensure that the Required Insurance is maintained on and in relation to the Site, its business and its assets and shall maintain such insurance or ensure that all such insurance is maintained as may be required by contract with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany.
- (b) Without limiting paragraph (a) above, the Borrower shall effect and maintain insurance or ensure that insurance is maintained as deemed sufficient by the Insurance Adviser and as described in the Insurance Report.
- (c) The Borrower shall pay or cause to be paid all premiums, do all other things necessary (to the extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany) to maintain all the insurances that it has taken out or has ensured have been taken out in relation to its business and assets and will procure that all insurance policies or certificates of insurance (with the exception of personal liability insurances and contractors' all risks insurances until completion of the building phase) shall contain loss payee provisions acceptable to the Facility Agent and the Security Agent noting the Security Agent's interest thereon and naming the Security Agent as loss payee.
- (d) The Borrower shall supply the Facility Agent on request with copies of each receipt or other evidence satisfactory to the Facility Agent for all premiums and other amounts payable by the Borrower or on behalf of the Borrower under the insurances effected and maintained pursuant to paragraphs (a) and (b) above and shall, in any event, use all reasonable endeavours to procure that the insurer in respect of such insurances undertakes to the Facility Agent to notify it should any renewal fee or other sum payable by the Borrower not be paid when due.

- (e) Upon request, the Borrower shall supply the Facility Agent with a copy of all insurance policies or certificates of insurance evidencing compliance with paragraphs (a) and (b) above or (in the absence of the same) such other evidence of the existence of any insurance referred to in paragraphs (a) and (b) above as may be reasonably acceptable to the Facility Agent and shall, in any event, notify the Facility Agent of any material changes to any such insurance made from time to time.
- (f) Notwithstanding the foregoing, the Borrower shall not be in breach of its obligations under this Clause 20.10 to the extent that insurances required to be taken out or maintained hereunder are not available due to lack of capacity in the insurance market or the premiums in respect of any such insurances are unreasonable in the opinion of the Security Agent (taking into account advice received from the Insurance Adviser, and acting on the instructions of the Majority Lenders having regard to the risk being covered and the rights and obligations of the Majority Lenders under this Agreement). A letter from the Insurance Adviser with respect to the capacity of the insurance market shall be *prima facie* evidence of such capacity.

20.11 **Intellectual Property**

The Borrower shall:

- (a) make such registrations and pay such fees and other amounts as are necessary to keep those registered Intellectual Property Rights owned by or registered in the name of the Borrower which are material to its business or required by law in force, and to record its interest in those Intellectual Property Rights;
- (b) observe and comply with all material obligations and laws to which it in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of the Intellectual Property Rights (or any part thereof) is subject where failure to do so might reasonably be expected to have a Material Adverse Effect;
- (c) do all acts as are reasonably practicable (including, without limitation, the institution of legal proceedings) to maintain, protect and safeguard the Intellectual Property necessary for its business as a whole; and
- (d) enter into and maintain such licence agreements, and obtain such authorisations, as are necessary for the Borrower to use all such Intellectual Property Rights which are material to its business where failure to do so, after having taken all reasonable actions to enter into and maintain such licence agreements and obtain such authorisations, would or might reasonably be expected to have a Material Adverse Effect.

20.12 **Environmental Compliance**

The Borrower shall obtain and maintain all requisite Environmental Licences required in relation to the Project and will comply in all material respects with:

- (a) all applicable Environmental Laws relating to the Project;
- (b) the terms and conditions of all Environmental Licences required in relation to the Project and applicable to it; and

- (c) all other covenants, conditions, restrictions and agreements entered into by or binding on the Borrower directly or indirectly concerned with any Environmental Contamination required in relation to the Project,

in each case where failure to do so would or might reasonably be expected to have a Material Adverse Effect.

**20.13 Environmental Claims**

The Borrower shall inform the Facility Agent in writing as soon as reasonably practicable upon its becoming aware of:

- (a) any Environmental Claim which has been commenced or threatened against the Borrower; or  
(b) any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against the Borrower, where the claim might, if determined against the Borrower, reasonably be expected to have a Material Adverse Effect.

**20.14 The Site, the Project Works and Rights of Access and Information**

- (a) The Borrower shall procure that the Project Works are maintained in all material respects in accordance with the requirements of the relevant Project Documents.  
(b) The Borrower shall maintain all easements, way leaves and other rights of access acquired and/or vested in it required to implement the Project in accordance with the Project Documents and will use best efforts to obtain any other easements, way leaves and other rights of access which it will require in the future in connection with the Project.  
(c) The Borrower shall give the Facility Agent, the Security Agent, the Lenders, the Project Engineer and the Technical Adviser reasonable access to the Site and the Equipment and permit the Facility Agent, the Security Agent, the Lenders, the Project Engineer and/or the Technical Adviser to inspect the same, in each case, during regular business hours upon the request of the Facility Agent; **provided that**, if no Default is continuing, such right of access and/or inspection shall not be exercised more than twice in any calendar year, or, in the case of the Security Agent, as permitted under any Security Document.  
(d) The Borrower agrees that the Federal/State Guarantors or any person acting on their behalf is entitled to access, upon prior written notice, to all property of the Borrower (including the Site and Equipment) at all times to investigate whether a claim (or any ground for making one) under the Federal/State Guarantee exists, existed or is reasonably foreseeable.  
(e) The Borrower must provide the Federal/State Guarantors with any information required by them in relation to the Federal/State Guarantee.  
(f) Each Finance Party is entitled to disclose any information in relation to the Facility and the Security granted under the Security Documents to the Federal/State Guarantors upon its request.  
(g) The Borrower will pay the costs of any inspection by or on behalf of the Federal/State Guarantors under this Clause 20.14.

- (h) The terms of paragraphs (d), (e), (f) and (g) above are for the benefit of, and may be relied on by, the third party which is contemplated by the relevant paragraph (*echter Vertrag zugunsten Dritter*).

**20.15 Taxation**

- (a) The Borrower shall duly and punctually pay and discharge all Taxes imposed upon it or its assets and due within the time period allowed without incurring penalties, save to the extent that:
- (i) payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes; and
  - (iii) payment can be lawfully withheld.
- (b) The Borrower shall not be materially overdue in the filing of any Tax returns.
- (c) The Borrower shall ensure that it continues to be resident for Tax purposes in Germany.

**20.16 Security**

- (a) Save as otherwise permitted by the terms of the Finance Documents, the Borrower shall ensure that any Security expressed to be created by it by or pursuant to, or, as the case may be, expressed to have been created by it and to be evidenced in, any Security Document to which it is a party remains in full force and effect with the ranking and priority it is expressed to have.
- (b) Save as otherwise permitted by the terms of the Finance Documents, the Borrower shall not do or omit to do anything or knowingly permit or cause anything to be done or omitted to be done which would or could adversely affect any Security expressed to be created by any Obligor by or pursuant to, or any Security expressed to have been created by any Obligor and to be evidenced in, any Security Document to which it is a party.
- (c) The Borrower shall take all such action as the Facility Agent or the Security Agent may reasonably request for the purpose of perfecting any such Security.
- (d) The Borrower shall, if the Security Agent lawfully and in accordance with the terms of the Finance Documents exercises any power (whether of sale or other disposal or otherwise) or right with respect to the Charged Assets, permit the exercise of such power or right.
- (e) The Borrower will ensure that all of its claims and contractual rights under all present and future Material Contracts, and all successor contracts, are assigned to the Security Agent.
- (f) The Borrower has granted or will grant the Security set out in No. 8 of the Federal/State Guarantors Decision to the Security Agent or the Finance Parties, as the case may be. This includes (but is not limited to) a security assignment of all claims under all insurance contracts taken out by the Borrower in relation to the Project (with the exception of personal liability insurances and contractors' all risks insurances until completion of the building phase) as well as a security assignment of all payment claims of the Borrower based on all legal grounds.
- (g) The Borrower shall ensure that all its obligations under the Finance Documents shall be secured (and remain secured until all such obligations have been discharged in full) by the Security it has created in favour of the Finance Parties over all the real property owned by it.

- (h) If any new Security is effectively granted to the Security Agent or the Finance Parties (as the case may be) otherwise than in the circumstances set out in paragraph (e) above, then the Security Agent must promptly notify the Federal/State Guarantors.
- (i) If the Federal/State Guarantors make a payment in respect of a claim by the Security Agent under the Federal/State Guarantee in accordance with its terms, then the Security Agent must transfer any remaining rights and claims that it has under the Security Documents to the Federal/State Guarantors to the extent of the amount of that payment unless that transfer automatically takes place by operation of law.

20.17 **Pari Passu Ranking**

The Borrower shall ensure that its payment obligations under the Finance Documents will rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to creditors or certain types of creditors generally.

20.18 **Minimum Cash Balances**

The Borrower shall maintain in accounts held with Dresdner Bank AG during each Relevant Period specified in Column A below the minimum amount of freely available Cash (for the avoidance of doubt, excluding any amounts deposited in the Escrow Account) and Cash Equivalent balances set out opposite such Relevant Period in Column B below:

| <u>Column A<br/>(Relevant Period)</u>                 | <u>Column B<br/>(Balance)</u>  |
|---|--|
| From the date of initial Utilisation to 31 March 2006 | EUR50,000,000  |
| the later of:   |  |
| (i) the date of initial Utilisation; and              | EUR75,000,000  |
| (ii) 1 April 2006 through 30 June 2006                |  |
| the later of:   | the lesser of:   |
| (i) the date of initial Utilisation; and              | (i) EUR100,000,000; and  |
| (ii) 1 July 2006 and thereafter                       | (ii) 50% of the aggregate outstanding Loans and undrawn Commitments. |

(the “**Minimum Cash**”), such amount to be increased by five (5) *per cent.* of the total amount of the Outstandings at the end of the Availability Period within five (5) Business Days of the first time the Facility Agent (acting on the instructions of the Majority Lenders)



directs the Borrower to increase the Cash reserves pursuant to Clause 6.2 (*Supplemental Cash Reserves*), unless the Federal/State Guarantors have vetoed such increase within seven (7) days after the Repayment Date following the lowering of the Credit Rating (as set out in Clause 6.2 (*Supplemental Cash Reserves*)) and by a further five (5) *per cent.* of the total amount of the Outstandings at the end of the Availability Period within five (5) Business Days of each subsequent time the Borrower is so directed by the Facility Agent (acting on the instructions of the Majority Lenders), unless the Federal/State Guarantors have vetoed such increase within seven (7) days after the Repayment Date following the lowering of the Credit Rating (as set out in Clause 6.2 (*Supplemental Cash Reserves*)); **provided that**, the obligation to hold such increased Minimum Cash amounts shall end upon the Credit Rating being at least Ba3 by Moody's and BB- by Standard & Poor's and at no time will the Borrower be required to maintain the Minimum Cash over and above the Outstandings at such time. In connection with the foregoing, the Facility Agent and the Borrower undertake to promptly inform the Federal/State Guarantors (if possible, together with any relevant documents in connection therewith) with respect to an expected downgrade of the Credit Rating (effort clause).

**20.19 Transaction Documents**

The Borrower shall comply in all material respects with and perform all of its obligations under the Transaction Documents to which it is a party.

**20.20 Subordinated Debt**

Other than as permitted pursuant to Clause 20.21 (*Distributions*), from the date of first Utilisation, the Borrower shall not:

- (a) pay, repay, prepay, redeem, purchase, return or otherwise retire the principal amount of any indebtedness; or
- (b) pay any interest or return on principal or repayment of principal or other distribution (whether in Cash or kind) or make any distribution of assets or other payments whatsoever in respect of any indebtedness,

in each case under any intra Group loan document and/or Subordinated Loan other than in accordance with the Subordination Agreement.

**20.21 Distributions**

- (a) From the date of first Utilisation, the Borrower shall ensure that no profit distribution, repayment of capital or other distribution (whether in Cash or in kind) is made in respect of:

- (i) its contributed capital to the Limited Partners; or
- (ii) a Subordinated Loan, other than in accordance with the Subordination Agreement; or
- (iii) a payment to the Guarantor or any Affiliate other than in respect of the amounts due to the Guarantor or Affiliate under a transaction at arm's length, which transaction does not constitute Financial Indebtedness of the Borrower, or in accordance with the Project Documents,

subject at all times to the maintenance of the Minimum Cash.

---

(b) Paragraph (a) above does not apply to Permitted Distributions.

20.22 **Merger**

The Borrower shall not enter into any amalgamation, demerger or merger.

20.23 **Indebtedness**

From the date of first Utilisation, the Borrower shall not:

- (a) incur, create or permit to subsist or have outstanding any Financial Indebtedness or enter into any agreement or arrangement whereby it is entitled to incur, create or permit to subsist any Financial Indebtedness, other than, in either case, Permitted Indebtedness; or
- (b) any other indebtedness, except as incurred in the ordinary course of its business.

20.24 **Loans Out, Guarantees and Contingent Liabilities**

(a) The Borrower shall not:

- (i) make any loans, grant any credit or provide any other financial accommodation to or for the benefit of any person, including any of its shareholders;
- (ii) give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person; or
- (iii) be or become directly or indirectly or actually or contingently liable for any loss, damage or expense resulting from the non-payment or breach of any obligation of any other person.

(b) Paragraph (a) above does not apply to Permitted Loans and Guarantees and to Permitted Security.

20.25 **Treasury Transactions**

The Borrower shall not enter into any Treasury Transaction except for:

- (a) Treasury Transactions entered into in accordance with Clause 20.26 (*Hedging*); or
- (b) any foreign exchange transactions for spot or forward delivery entered into in the ordinary course of business (and not for investment or speculative purposes) to hedge currency exposures incurred by it.

20.26 **Hedging**

The Borrower shall ensure that the Hedging Strategy has been implemented within ninety (90) days of the date of initial Utilisation.

20.27 **Fees and Commissions**

The Borrower shall not pay any fees or commissions to any person other than:

- (a) any fees payable on arm's length terms to third parties who have rendered service or advice to it which were required by it in the ordinary course of business; or
- (b) as required under the Transaction Documents (including the Federal/State Guarantee), including, but not limited to, payments of the initial and current fees for the Federal/State Guarantee in accordance with the "Hinweise" attached hereto in Schedule 18.

20.28 **Arm's Length Basis**

The Borrower will not enter into any arrangement or contract with any of its Affiliates or any other member of the Group save where such arrangement or contract is entered into on an arm's length basis.

20.29 **Acquisitions and Investments**

The Borrower shall not:

- (a) purchase, subscribe for or otherwise acquire any shares (or other securities or any interest therein) in, or incorporate, any other company or agree to do any of the foregoing; or
- (b) purchase or otherwise acquire any assets (other than in the ordinary course of business) or (without limitation to any of the foregoing) acquire any business or interest therein or agree to do so.

20.30 **Joint Ventures**

The Borrower shall not :

- (i) form, or enter into, or permit to subsist;
- (ii) purchase, subscribe for or otherwise acquire any shares (or other securities or any interest therein) in; or
- (iii) transfer any assets to, or lend to, or guarantee or give Security for the obligations of, any partnership, consortium or Joint Venture in which it has or will have an interest or agree to do any of the foregoing.

20.31 **Amendments to Transaction Documents**

The Borrower shall not amend, vary, novate, supplement or terminate any Transaction Document to which a Finance Party is not a party delivered to the Facility Agent pursuant to Clause 4 (*Conditions of Utilisation*), or waive any right thereunder, except for:

- (a) any of the foregoing which is expressly consented to in writing by the Facility Agent acting on the instructions of the Majority Lenders or, pursuant to Clause 33.2 (*Exceptions*), all Lender consent; or
- (b) any amendment, variation or waiver which is of a minor or technical nature or would not adversely affect the rights of the Finance Parties under the Finance Documents.

20.32 **Auditors**

The Borrower shall at all times have its accounts audited by the Auditors.

20.33 **Subsidiaries**

The Borrower shall not own any shareholdings in any Subsidiaries.

20.34 **Personnel**

Following the date of Technical Completion, at least eighty (80) *per cent.* of the personnel not engaged in general or administrative activities of the Borrower will at all times be employees of the Borrower itself.

20.35 **Subsidies**

The Borrower undertakes to comply with and to fulfill all covenants and other ancillary requirements applicable to it in connection with the grant and/or allowance of subsidies (*Investitionszuschüsse/Investitionszulagen*) to it under the Subsidy Agreement. The Borrower also undertakes to ensure that all obligations (as the case may be, as amended from time to time) undertaken by it in connection with the granting of other state aid (in particular, investment allowances) are fulfilled.

20.36 **Material Adverse Effect**

The Borrower shall not enter into any agreement or obligation:

- (i) which could have a Material Adverse Effect; or
- (ii) the performance of which in accordance with its terms would result in a breach of any provision of any Finance Document by any Obligor.

**21. EVENTS OF DEFAULT**

21.1 **Acceleration**

On and at any time after the occurrence of an event or circumstance set out in this Clause 21 which is continuing and, if in case of an event or circumstance pursuant to Clause 21.3 (*Financial Covenants*), Clause 21.5 (*Misrepresentation*), Clauses 21.9 (*Ownership of the Borrower*) to 21.15 (*Auditors' Qualification*), Clauses 21.17 (*Change of Control*) to 21.20 (*Project Documents*) and paragraphs (c) and (d) of Clause 21.22 (*Guarantor's Non-Compliance*), such event or circumstance has adverse consequences for the Lenders' risk and security position, such event or circumstance shall constitute an event of default (an "**Event of Default**"). Upon the occurrence of an Event of Default the Lenders shall be entitled to terminate this Agreement for cause (*wichtiger Grund*), and to avail themselves in such case of the rights enumerated below:

- (a) the Borrower shall not be entitled to make any distributions or other payments to the Guarantor or the Limited Partners, or any of their Affiliates; and
- (b) subject to either:
  - (i) the Federal/State Guarantors' consent; or

- (ii) the lapse of three (3) Months after the occurrence of such Event of Default (for the avoidance of doubt, such three (3) Month period will be inclusive of any cure period provided for in this Clause 21),  
the Facility Agent may, and shall if so directed by the Majority Lenders or by the Federal/State Guarantors, by notice to the Borrower:
- (A) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (B) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (C) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or
- (D) exercise, or direct the Security Agent to exercise, all or any of its or, as the case may be, the Security Agent's rights, remedies, powers or discretions under any of the Finance Documents.

**21.2 Non-Payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable, unless payment is made within five (5) Business Days of its due date.

**21.3 Financial Covenants**

Any requirement of Clause 19 (*Financial Covenants*) and/or Clause 12 (*Financial Covenants*) of the Guarantee Agreement is not satisfied.

**21.4 Other Obligations**

- (a) The Borrower fails to comply with a material provision under this Agreement (other than those referred to in Clause 21.2 (*Non-Payment*) and Clause 21.3 (*Financial Covenants*)) and/or either Obligor does not comply with any material provision of any other Finance Document.
- (b) The Borrower fails to comply with any provision under Clause 18 (*Information Undertakings*).
- (c) The Borrower fails to comply with any provision under this Agreement (other than those referred to in Clause 21.2 (*Non-Payment*), Clause 21.3 (*Financial Covenants*), paragraphs (a) and (b) of this Clause 21.4 and paragraph (b) of Clause 21.21 (*Equity Contributions and Subordinated Loans*)) and/or either Obligor does not comply with any provision of any other Finance Document (other than those referred to in paragraphs (a) or (b) of Clause 21.22 (*Guarantor's Non-Compliance*)).
- (d) No Event of Default will occur under:
  - (i) paragraph (a) or paragraph (b) of this Clause 21.4 if the failure to comply is capable of remedy and is remedied within five (5) Business Days; or

(ii) paragraph (c) of this Clause 21.4 if the failure to comply is capable of remedy and is remedied within twenty (20) Business Days, of the Facility Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

21.5 **Misrepresentation**

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of either Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made or repeated.

21.6 **Cross Default**

- (a) Any liability of the Borrower for a single principal amount of indebtedness of five million (5,000,000) Euro (or its equivalent in any other currency or currencies on the date of default) or more or of the Guarantor for a single principal amount of twenty million (20,000,000) Euro (or its equivalent in any other currency or currencies on the date of default) or more is not paid when due and payable nor within any originally applicable grace period.
- (b) Any liability of the Borrower for a single principal amount of Financial Indebtedness of five million (5,000,000) Euro (or its equivalent in any other currency or currencies of default) or more or of the Guarantor for a single principal amount of twenty million (20,000,000) Euro (or its equivalent in any other currency or currencies on the date of default) or more is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) No Event of Default will occur under this Clause 21.6 if, in any such case, the relevant indebtedness or Financial Indebtedness, as the case may be, is being contested in good faith or Security has been provided to the creditor of the relevant indebtedness or Financial Indebtedness, as the case may be, to the satisfaction of such creditor.

21.7 **Insolvency**

- (a) The Borrower, the Second General Partner, any Limited Partner affiliated to the Borrower or any direct or indirect German Holding Company of the Borrower (the “**Relevant German Company**”) is unable to pay its debts as they fall due (*Zahlungsunfähigkeit*), suspends making payments on any of its debts or, for any of the reasons set out in Sections 17-19 of the German *Insolvenzordnung*, the Relevant German Company files for insolvency (*Antrag auf Eröffnung eines Insolvenzverfahrens*) or the board of directors (*Geschäftsführung*) of the Relevant German Company is required by law to file for insolvency or the competent court takes any of the actions set out in Section 21 of the German *Insolvenzordnung* or institutes insolvency proceedings against the Relevant German Company (*Eröffnung des Insolvenzverfahrens*) or any event occurs or proceedings commence, appointments are sought or other procedures or steps are taken with respect to the Relevant German Company which, under the laws of any jurisdiction to which it is subject or in which it has assets, has a similar or analogous effect and in the event that such proceedings, appointments or other procedures or steps applied for or commenced by a third party, only to the extent that the same are not dismissed within sixty (60) days of the commencement of such proceedings, procedures or steps or such appointment.

- (b) Proceedings have been applied for or commenced in respect of the Guarantor or the General Partner seeking:
- (i) to have an order for relief entered; or
  - (ii) a declaration that the Guarantor or the General Partner is insolvent; or
  - (iii) a declaration or finding, or seeking dissolution, winding-up, charter revocation or forfeiture, liquidation, reorganisation, arrangement, adjustment, composition or other similar relief with respect to the Guarantor or the General Partner, their respective assets or their respective debts,
- under any law relating to bankruptcy, insolvency, relief of debtors or protection of creditors, termination of legal entities or any other similar law now or hereafter in effect and which are not dismissed within sixty (60) days of the commencement of such proceedings or such appointment.
- (c) The Guarantor or the General Partner:
- (i) voluntarily suspends transaction of its business, ceases payment of its creditors or makes a general assignment for the benefit of its creditors;
  - (ii) applies for or institutes any of the proceedings described in paragraph (b) above, or (whether or not any such proceeding have been applied for or commenced) consents to or acquiesces in any such order for relief, declaration, finding or other similar relief described in paragraph (b) above, or to the taking of possession by any custodian, receiver, trustee, liquidator, assignee, sequestrator or other officer having similar powers of all or any substantial part of its property;
  - (iii) dissolves, winds-up, revokes or forfeits its charter (or other constituent documents) or liquidates itself or any substantial part of its property; or
  - (iv) takes any corporate or similar action in furtherance of any of the foregoing.

#### 21.8 **Creditors' Process**

Any attachment, sequestration, distress or execution affects:

- (a) any asset or assets of a Relevant German Company or the General Partner pursuant to a claim having an aggregate amount of one million (1,000,000) Euro (or its equivalent on the date on which it takes effect) or more; or
- (b) all or substantially all of the assets of the Guarantor pursuant to a claim having an aggregate amount of thirty million (30,000,000) Dollars (or its equivalent on the date on which it takes effect) or more;

and is not discharged within thirty (30) days.

#### 21.9 **Ownership of the Borrower**

The Guarantor ceases to own, directly or indirectly, a majority of the voting capital of the Borrower without having first obtained the prior written consent of the Majority Lenders and the Federal/State Guarantors, such consent not having been unreasonably withheld or delayed.

---

21.10 **Finance Documents**

If:

- (a) it is or becomes unlawful for a Security Provider to perform any of its material obligations under the Finance Documents;
- (b) a Security Provider repudiates a material obligation under Finance Document or repudiates or terminates a Finance Document;
- (c) a Security Provider evidences an intention to repudiate a material obligation under a Finance Document or an intention to repudiate or terminate a Finance Document; or
- (d) any material term of a Finance Document is not or ceases to be binding on or enforceable against a Security Provider.

21.11 **Transaction Security**

If:

- (a) any Transaction Security is not in full force and effect in accordance with its terms with the ranking and priority it is expressed to have; or
- (b) an Obligor repudiates any of the Transaction Security or evidences an intention to repudiate any of the Transaction Security.

21.12 **Hedging Strategy**

The Hedging Strategy is not implemented within ninety (90) days of the date of the initial Utilisation and maintained thereafter.

21.13 **Proceedings Pending**

- (a) Any litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which has had or is likely to have a Material Adverse Effect is or are started or filed against any Obligor.
- (b) Any final (*rechtskräftig*) judgment of any litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency adversely determined against an Obligor that exceeds an aggregate amount of thirty million (30,000,000) Euro (or its equivalent on the date of such judgment).
- (c) Any material collective labour dispute occurs which has or is reasonably likely to have a Material Adverse Effect.

21.14 **Cessation of Business**

Any Obligor ceases to carry on all or any substantial part of its business or proposes to do so.

21.15 **Auditors' Qualification**

The Auditors qualify their certification of the audited financial statements (*Einschränkung des Bestätigungsvermerks*) of the Borrower or qualify their report in any manner that is, in the opinion of the Majority Lenders, materially adverse in the context of the Finance Documents and the transactions contemplated by the Finance Documents.



---

21.16 **Material Adverse Change or Effect**

Any event or circumstance occurs which the Majority Lenders reasonably believe has had or is likely to have a Material Adverse Effect.

21.17 **Change of Control**

There is a Change of Control.

21.18 **Authorisations and Intellectual Property**

- (a) Any material Authorisation (including, but not limited to, Authorisations under building laws and under the Federal Immission Protection Act – *BImSchG*) of the Borrower or in respect of the Borrower's business (other than an Authorisation in respect of a Transaction Document or any Intellectual Property) is adversely amended, terminated, suspended, withdrawn or revoked, in whole or in part, or does not remain in full force and effect or otherwise expires and is not renewed prior to its expiry (in each case, without an alternative or replacement Authorisation, on terms reasonably satisfactory to the Facility Agent, being in place within thirty (30) days and having substantially equivalent effect).
- (b) Any Intellectual Property or Authorisation in respect thereof which is material to the Obligors' business conflicts with the rights of any third party or is adversely amended, terminated, suspended, withdrawn or revoked, in whole or in part, with a Material Adverse Effect in either case.

21.19 **Misappropriation**

The Borrower utilises the Facility in whole or in part for any purposes other than those set out in Clause 3 (*Purpose*).

21.20 **Project Documents**

If:

- (a) it is or becomes unlawful for any party to perform under a Project Document in respect of any material provision thereof;
- (b) any party repudiates a Project Document or evidences an intention to repudiate a Project Document; or
- (c) any material term of a Project Document is not or ceases to be binding on or enforceable against a party thereto, the consequences of which would adversely affect the rights of the Finance Parties under the Finance Documents.

21.21 **Equity Contributions and Subordinated Loans**

- (a) Any of the Limited Partners fails to make a contribution to the partnership capital of the Borrower in accordance with the terms of the Partnership Agreement and/or fails to provide Subordinated Loans in accordance with the terms of the Subordinated Loan Agreement; unless, the defaulting Limited Partner's:
- (i) share of equity is covered; and/or
  - (ii) Subordinated Loans are provided in the requisite amount,
- by another Limited Partner or third parties approved by, and on terms satisfactory to, the Majority Lenders and the Federal/State Guarantors within sixty (60) days after the due date of any such equity contribution or Subordinated Loans; however, within one hundred and eighty (180) days thereafter, such equity contribution or Subordinated Loans may be replaced by third party equity or other Subordinated Loans approved by, and on terms satisfactory to, both the Majority Lenders and the Federal/State Guarantors.
- (b) Any payments are made by the Borrower contrary to the terms of the Subordination Agreement.
- (c) No Event of Default will occur under paragraph (b) of this Clause 21.21 if the relevant payments relate to ones which are made by the Borrower contrary to the terms of the Cost Plus Reimbursement Agreement or Management Service Agreement and the correct payments are made within five (5) Business Days from the date on which they were due and payable.

21.22 **Guarantor's Non-Compliance**

The Guarantor does not comply with its obligations in relation to any of the following:

- (a) to make a payment under the Cost Plus Reimbursement Agreement;
- (b) to make payments to the Borrower, or otherwise to provide funds to the Borrower, in each case without delay in the amount of any Cash Shortfalls, by way of equity contributions, Subordinated Loans or, as the case may be, prepayment for products and/or services (not in excess, however, of the Guarantor's obligations under the Guarantee Agreement, the Subordinated Loan Agreements, the Revolving Credit Agreement and the Partnership Agreement, and not giving rise to any right of any person (with the exception of the Borrower (to the extent that it is still a member of the Group)) to enforce the relevant funding arrangements);
- (c) to provide management and/or technical support to the Borrower pursuant to the Project Documents; or
- (d) to indemnify the Borrower no later than by the due date thereof for any tax payments required to be made by the Borrower pursuant to any tax assessment made by the competent tax authorities in view of transactions not made on an arms' length basis,

unless failure by the Guarantor to comply with any such obligation mentioned in relation to:

- (i) paragraph (a) or paragraph (b) above is capable of remedy and is remedied within seven (7) Business Days of its respective due date; and
- (ii) paragraph (c) or paragraph (d) above is capable of remedy and is remedied within twenty (20) Business Days of the Borrower receiving notice thereof.

**SECTION 8**  
**CHANGES TO PARTIES**

**22. CHANGES TO THE LENDERS**

**22.1 Assignments and Transfers by the Lenders**

- (a) Subject to this Clause 22, a Lender (the “**Existing Lender**”) may assign and transfer any of its rights and obligations under this Agreement to another bank, financial institution, trust, fund, special purpose vehicle or other entity established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”); **provided that**, in case of an assignment or transfer to a New Lender (i) the consent of the Federal/State Guarantors is obtained or has not been unreasonably withheld or delayed; and (ii) the consent of the Borrower is obtained, such consent not to be unreasonably withheld or delayed (the Borrower being deemed to have given such consent ten (10) Business Days after the Borrower and the Guarantor have been given notice of a request for such an assignment or transfer, unless such request is expressly refused within that time).
- (b) In addition to any other assignment or participation rights provided in this Clause 22, each Lender may assign or pledge all or any portion of its Loans and the other obligations owed to such Lender, without (unless required by applicable law) notice to or consent of the Borrower, to any federal reserve bank or central bank or multilateral bank; **provided, however, that**:
- (i) no Lender shall be relieved of any of its obligations hereunder as a result of such assignment or pledge; and
  - (ii) in no event shall such federal reserve bank or central or multilateral bank be considered to be a “**Lender**” or be entitled to require the assigning Lender to take or omit to take any action hereunder.

**22.2 Conditions of Assignment and Transfer**

- (a) The consent of neither the Borrower nor any other Obligor is required for an assignment or transfer by a Lender to another Lender or one of its Affiliates.
- (b) An assignment or transfer of a Lender’s Commitment must be in a minimum amount of ten million (10,000,000) Euro or any higher amount which is an integral multiple of one million (1,000,000) Euro unless all of such Lender’s Commitment and participation in Outstandings are assigned or transferred.
- (c) An assignment will only be effective on receipt by the Facility Agent of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender.
- (d) A transfer will only be effective if the procedure set out in Clause 22.5 (*Procedure for Transfer*) is complied with.

- 
- (c) If:
- (i) a Lender assigns and or transfers any of its rights, obligations and/or claims under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross-up and Indemnities*) or Clause 13 (*Increased Costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.
- 22.3 Assignment and Transfer Fee**
- If the New Lender is not an Affiliate of a Lender the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of two thousand (2,000) Euro.
- 22.4 Limitation of Responsibility of Existing Lenders**
- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer from a New Lender of any of the rights, obligations and claims assigned or transferred under this Clause 22; or

- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

22.5 **Procedure for Transfer**

- (a) Subject to the conditions set out in Clause 22.2 (*Conditions of Assignment and Transfer*) a transfer is effected in accordance with paragraph (b) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate and promptly deliver a copy thereof to the Borrower if requested.
- (b) On the Transfer Date:
  - (i) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights or claims against one another which differ from the rights, obligations and claims among the Obligors and the Existing Lender only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (ii) the Facility Agent, the Security Agent, the Mandated Lead Arrangers, the New Lender and the other Lenders shall acquire the same rights and claims and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights, claims and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Mandated Lead Arrangers and the Existing Lender shall each be released from further obligations to each other under this Agreement; and
  - (iii) the New Lender shall become a Party as a “**Lender**”.

22.6 **Disclosure of Information**

- (a) Each Finance Party shall during the continuance of this Agreement keep confidential any information about or provided by or on behalf of any Obligor under the terms of this Agreement (the “**Information**”), and without the prior written consent of the Borrower shall not disclose the Information to any third party other than:
  - (i) any of its Affiliates and any of its or their respective officers, employees, agents, professional advisers or auditors;
  - (ii) any other person:
    - (A) to (or through) whom that Lender assigns and transfers (or may potentially assign and transfer) all or any of its rights, obligations and/or claims under this Agreement;
    - (B) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor;

- (iii) any third party:
  - (A) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation;
  - (B) in any proceedings arising out of, or in connection with, any Finance Documents to the extent required for the purpose of such proceedings;
  - (C) if required to do so by any court of competent jurisdiction;
  - (D) if the information is in the public domain other than where the information is in the public domain due to a breach of this Clause 22.6 by the person making the disclosure;
- (iv) any other member of the Group; and
- (v) in the case of the Reporting Agent, the Federal/State Guarantors,

**provided that**, in relation to paragraph (i) (other than any a person who is otherwise bound by contractual or professional confidentiality obligations) and paragraph (ii) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking.

- (b) Notwithstanding the foregoing or anything to the contrary in this Agreement or any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, each Party shall be permitted to disclose the tax treatment and tax structure of the transactions set forth in this Agreement and in the other Finance Documents. This permission to disclose includes the ability of each Party to consult, without limitation of any kind, any tax advisor regarding the tax treatment or tax structure of the transactions set forth in this Agreement and in the other Finance Documents. The Parties acknowledge that this written authorisation does not constitute a waiver by any Party of any privilege held by such Party pursuant to the attorney-client privilege or the confidentiality privilege of Section 7525 (a) of the U.S. Internal Revenue Code of 1986, as amended, or pursuant to any similar laws and regulations in any relevant other jurisdiction.

#### 22.7 **Ancillary Provisions**

Each Obligor shall execute and do all such transfers, assignments, assurances, acts and things as the Facility Agent may reasonably request for perfecting and completing any assignment and transfer by a Lender; **provided however**, such Lender reimburses the Obligors for their respective reasonable costs and expenses and such assignment and transfer is permitted pursuant to this Clause 22.

### 23. **CHANGES TO THE BORROWER**

#### 23.1 **Assignments and Transfers by the Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

**SECTION 9**  
**THE FINANCE PARTIES**

**24. ROLE OF THE AGENTS AND THE MANDATED LEAD ARRANGERS**

**24.1 Appointment of the Facility Agent and the Security Agent**

- (a) Each of the Finance Parties other than the Facility Agent appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Finance Parties other than the Security Agent appoints the Security Agent to act as its security agent under and in connection with the Finance Documents.
- (c) Each of the Finance Parties other than the Reporting Agent appoints the Reporting Agent to act as its reporting agent under and in connection with the Finance Documents.
- (d) Each of the Finance Parties other than the Facility Agent authorises the Facility Agent, each of the Finance Parties other than the Security Agent authorises the Security Agent, and each of the Finance Parties other than the Reporting Agent authorises the Reporting Agent, to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (e) Each of the Finance Parties other than the Facility Agent, the Security Agent and the Reporting Agent hereby grants power of attorney to the Facility Agent, the Security Agent and the Reporting Agent, respectively, to be exercised for the purposes described in paragraph (d) above. The Facility Agent, the Security Agent and the Reporting Agent shall each be released from the restrictions of Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*); they are authorised to delegate their powers of attorney, including the exemption from the restrictions of Section 181 of the German Civil Code. At the request of the Facility Agent, the Security Agent and/or the Reporting Agent, the Mandated Lead Arrangers and the Lenders shall grant special powers of attorney to the Facility Agent, the Security Agent and/or the Reporting Agent to enter into any Finance Documents, or any amendments thereof, on their behalf.
- (f) Each of the Finance Parties other than the Security Agent authorises the Security Agent, to enter as security agent on behalf of the Finance Parties (with the effect that each Finance Party becomes a party thereunder) any pledge agreements governed by German law. The authorisation granted herein comprises any action or declaration the Security Agent may deem necessary in connection with such pledge agreements (including any action or declaration that the Security Agent deems to be necessary in order to create and continue valid pledge agreements governed by German law).

**24.2 Duties of the Facility Agent, the Security Agent and the Reporting Agent**

- (a) The Facility Agent shall promptly forward to a Party the original or a copy of any document that is delivered to the Facility Agent for that Party by any other Party.
- (b) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Lenders.

- (c) The Facility Agent shall promptly notify the Lenders of any Default arising under Clause 21.2 (*Non-payment*).
- (d) The Facility Agent shall promptly provide the Security Agent with such certificate(s) as the Security Agent may require as to all amounts which are owing, actually or contingently, at any time by any Obligor to all or any of the Finance Parties (other than the Security Agent in its capacity as security agent) under the Finance Documents, whether or not due.
- (e) The Security Agent shall promptly notify the Facility Agent of the contents of any notice or document received by it, in its capacity as security agent, from any of the Obligors under any of the Finance Documents.
- (f) The Reporting Agent shall review the statements received by it under paragraph (d)(A) of Clause 18.1 (*Financial Statements*) to check that they are in compliance with the purpose of the Loans set out in Clause 3 (*Purpose*) and whether an Event of Default is evidenced and shall notify the Federal/State Guarantors, the Facility Agent, the Security Agent and the Lenders accordingly. The Reporting Agent must exercise the standard of care of a prudent banker (*mit banküblicher Sorgfalt*) in performing this obligation.

**24.3 Role of the Mandated Lead Arrangers**

Except as specifically provided in the Finance Documents, each Mandated Lead Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

**24.4 No Fiduciary Duties**

- (a) Nothing in this Agreement constitutes the Facility Agent, the Security Agent (except as expressly provided in Schedule 10 (*Form of Security Agency Agreement*)), the Reporting Agent or the Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent, the Security Agent (except as expressly provided in Schedule 10 (*Form of Security Agency Agreement*) or in any Security Document), the Reporting Agent or the Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.
- (c) No Agent is bound to monitor or verify the application of the proceeds of, or the use of, any Utilisation pursuant to this Agreement.

**24.5 Business with the Group**

- (a) Each Agent and the Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.
- (b) Each Agent and each Mandated Lead Arranger shall be entitled, notwithstanding that it is also an Agent or, as the case may be, a Mandated Lead Arranger to take, or refrain from taking, any action which it would be entitled to take or refrain from taking as a Finance Party or in connection with any other relationship with any member of the Group or any other person if it were not an Agent or, as the case may be, a Mandated Lead Arranger.
- (c) Neither the Facility Agent nor the Security Agent nor the Reporting Agent shall be precluded, by virtue of its position as a Finance Party or any such other relationship, from



exercising any of its rights, powers, authorities or discretions as agent or, as the case may be, as security agent or, as the case may be, as reporting agent under the Finance Documents.

**24.6 Rights and Discretions of the Facility Agent, the Security Agent and the Reporting Agent**

- (a) The Facility Agent, the Security Agent and the Reporting Agent may rely on:
- (i) any communication, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Facility Agent, the Security Agent and the Reporting Agent may assume (unless it has received notice to the contrary in its capacity as agent or, as the case may be, as security agent or, as the case may be, as reporting agent) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.2 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
  - (iii) any notice or request made by the Borrower (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligor.
- (c) Each of the Facility Agent, the Security Agent and the Reporting Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) Each of the Facility Agent, the Security Agent and the Reporting Agent may act in relation to the Finance Documents through its personnel and Agents.

**24.7 Majority Lenders' Instructions**

- (a) Unless a contrary indication appears in a Finance Document, each of the Facility Agent and the Security Agent shall:
- (i) act in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from acting or exercising any right, power, authority or discretion vested in it as Facility Agent or Security Agent, as the case may be); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with such an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Lenders and the Mandated Lead Arrangers.

- (c) Each of the Facility Agent and the Security Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such Security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, all the Lenders) each of the Facility Agent and the Security Agent may act or refrain from taking any action or from exercising any right, power or discretion vested in it as an agent under any Finance Document unless and until instructed by the Majority Lenders as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised.
- (e) Neither the Facility Agent nor the Security Agent is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

**24.8 Responsibility for Documentation**

None of the Facility Agent, the Security Agent, the Reporting Agent and the Mandated Lead Arrangers:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Reporting Agent, the Mandated Lead Arrangers, an Obligor or any other person and given in or in connection with any Finance Document or the Information Memorandum; or
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

**24.9 Exclusion of Liability**

- (a) Without limiting paragraph (b) below nor paragraph (f) of Clause 24.2 (*Duties of the Facility Agent, the Security Agent and the Reporting Agent*), neither the Facility Agent nor the Security Agent will be liable for any action taken by it under or in connection with, or for any omission by it in relation to, any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party may take any proceedings against any officer, employee or agent of the Facility Agent or the Security Agent in respect of any claim it might have against the Facility Agent or the Security Agent or in respect of any act or omission of any kind by that officer, employee or Agent in relation to any Finance Document and any officer, employee or agent of the Facility Agent or the Security Agent may rely on this Clause.
- (c) Neither the Facility Agent nor the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.

**24.10 Lenders' Indemnity to the Facility Agent, the Security Agent and the Reporting Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, the Security Agent and the Reporting Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Facility Agent, the Security Agent or the Reporting Agent (otherwise than by reason of its gross negligence or wilful misconduct) in acting as Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent under the Finance Documents (unless it has been reimbursed by an Obligor pursuant to a Finance Document).

**24.11 Resignation of the Facility Agent, the Security Agent or the Reporting Agent**

- (a) The Facility Agent, the Security Agent and the Reporting Agent may each resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Facility Agent, the Security Agent and the Reporting Agent may each resign by giving notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent in accordance with paragraph (b) above within thirty (30) days after notice of resignation was given, the Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent (after consultation with the Borrower) may appoint a successor agent or security agent (acting through an office in Luxembourg).
- (d) The retiring Facility Agent, the Security Agent or the Reporting Agent shall, at its own cost, make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as agent or security agent under the Finance Documents.
- (e) The Facility Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the receipt by the Facility Agent of written confirmation from the successor (in form and substance satisfactory to the Facility Agent) that the successor agrees to be bound by the provisions of the Finance Documents and all other related agreements to which the Facility Agent is a party in its capacity as agent under the Finance Documents.
- (f) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor;
  - (ii) the receipt by the Security Agent of written confirmation from the successor (in form and substance satisfactory to the Security Agent) that the successor agrees to be bound by the provisions of the Finance Documents and all other related agreements to which the Security Agent is a party in its capacity as security agent under the Finance Documents; and

- (iii) the receipt by the Facility Agent of written confirmation from the Security Agent (in form and substance satisfactory to the Facility Agent) that it has received, and found satisfactory, the confirmation referred to in sub-paragraph (ii) above and that all Security created pursuant to the Security Documents and all the Security Agent's rights, benefits and obligations as security agent under the Finance Documents have been transferred to its successor.
- (g) The Reporting Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor;
  - (ii) the receipt by the Reporting Agent of written confirmation from the successor (in form and substance satisfactory to the Reporting Agent) that the successor agrees to be bound by the provisions of the Finance Documents and all other related agreements to which the Reporting Agent is a party in its capacity as reporting agent under the Finance Documents; and
  - (iii) the receipt by the Facility Agent of written confirmation from the Reporting Agent (in form and substance satisfactory to the Facility Agent) that it has received, and found satisfactory, the confirmation referred to in sub-paragraph (ii) above.
- (h) Upon any such resignation notice taking effect, the retiring Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 24 and, in the case of the Security Agent, of Schedule 10 (*Form of Security Agency Agreement*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (i) After consultation with the Borrower, the Majority Lenders may, by notice to the Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent shall resign in accordance with paragraph (b) above.
- (j) The Parties agree, if requested to do so, to execute whatever documents may be reasonably required to effect such a change of Facility Agent and/or Security Agent and/or Reporting Agent.

#### 24.12 Confidentiality

- (a) The Facility Agent (in acting as agent), the Security Agent (in acting as security agent) and the Reporting Agent (in acting as reporting agent) shall be regarded as acting through its respective agency or security agent division which shall in each case be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Facility Agent or, as the case may be, the Security Agent or, as the case may be, the Reporting Agent, it may be treated as confidential to that division or department and the Facility Agent or, as the case may be, the Security Agent or, as the case may be, the Reporting Agent shall not be deemed to have notice of it.

- (c) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent, the Security Agent, the Reporting Agent and the Mandated Lead Arrangers is obliged to disclose to any other person;
  - (i) any confidential information; or
  - (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

**24.13 Relationship with the Lenders**

- (a) The Facility Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Lender shall supply the Facility Agent with any information required by the Facility Agent in order to calculate the Minimum Reserve Cost, if any.
- (c) Neither the Facility Agent nor the Security Agent nor the Reporting Agent shall have any obligation or liability to any Lender or any other person as a result of any failure by any Obligor or any other person to perform any of its obligations under the Finance Documents.
- (d) If the Facility Agent notifies a Lender that it is required to make a determination in relation to Clause 21.1 (*Acceleration*) and the Facility Agent does not receive a response in writing from such Lender within five (5) Business Days of such notification, then such Lender will be deemed to have determined that the Lenders should terminate this Agreement for cause (*wichtiger Grund*) and that the Facility Agent should avail itself, on behalf of the Lenders, of the rights enumerated in paragraph (b) of Clause 21.1 (*Acceleration*).

**24.14 Credit Appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to each Agent and the Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the ownership, value or sufficiency of any of the Charged Assets, the adequacy or priority of any of the Security created pursuant to the Security Documents, the right or title of any person in or to any Charged Assets or the existence of any Security affecting the same;

- (e) the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Facility Agent, the Security Agent, the Reporting Agent, any Party or any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (f) the adequacy, accuracy and/or completeness of any communication delivered to it under any of the Finance Documents, any legal or other opinions, reports, valuations, certificates, appraisals or other documents delivered or made or required to be delivered or made at any time in connection with any of the Finance Documents or any other report or other document, statement or information circulated, delivered or made, whether orally or otherwise and whether before, on or after the Signing Date.

24.15 **Reference Banks**

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent shall appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

24.16 **Parallel Debt**

- (a) Each of the Parties hereto agree, and the Borrower acknowledges by way of an abstract acknowledgement of debt (*abstraktes Schuldanerkenntnis*) (the “**Acknowledgement**”), that each and every obligation of the Borrower (and any of its successors pursuant to this Agreement) up to the Facility Amount under this Agreement and the other Finance Documents, shall also be owing in full to the Security Agent (and each of the latter’s successors under this Agreement), and that accordingly the Security Agent will have its own independent right to demand performance by the Borrower of those obligations. The Security Agent undertakes towards the Borrower that in case of any discharge of any such obligation owing to one of the Security Agent or a Finance Party, it will, to the same extent, not make a claim against the Borrower under the Acknowledgement at any time, **provided that** any such claims can be made against the Borrower if such discharge is made by virtue of any set off, counterclaim or similar defence invoked by the Borrower *vis-à-vis* the Security Agent other than as permitted pursuant to Clause 27.6 (*No Set-off by the Borrower*).
- (b) Without limiting or affecting the Security Agent’s rights against the Borrower (whether under this paragraph or under any other provision of the Finance Documents), the Security Agent agrees with each other Finance Party (on a several and divided basis) that, subject as set out in the next sentence, it will not exercise its rights under the Acknowledgement with a Finance Party except with the consent of the relevant Finance Party. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Security Agent’s right to act in the protection or preservation of rights under or to enforce any Security Document as contemplated by this Agreement and/or the relevant Security Document (or to do any act reasonably incidental to the foregoing).

**25. CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

**26. SHARING AMONG THE FINANCE PARTIES**

**26.1 Payments to Finance Parties**

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with Clause 27 (*Payment Mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 27 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 27.5 (*Partial Payments*).

**26.2 Redistribution of Payments**

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 27.5 (*Partial Payments*).

**26.3 Recovering Finance Party’s Rights**

- (a) On a distribution by the Facility Agent under Clause 26.2 (*Redistribution of Payments*), the Finance Parties that have shared in the redistribution shall assign to the Recovering Finance Party their rights to the payments that were redistributed.
- (b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment that is immediately due and payable.

26.4 **Reversal of Redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 26.2 (*Redistribution of Payments*) shall, upon request of the Facility Agent, pay to the Facility Agent for account of that Recovering Finance Party an amount equal to its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights to take the benefit of an assignment in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

26.5 **Exceptions**

- (a) This Clause 26 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings if:
  - (i) it notified the other Finance Parties of the legal or arbitration proceedings; and
  - (ii) the other Finance Parties had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.



**SECTION 10**  
**ADMINISTRATION**

**27. PAYMENT MECHANICS**

**27.1 Payments to the Facility Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor (subject to Clause 27.9 (*Payments to the Security Agent*)) or that Lender shall make the same available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Facility Agent specifies.

**27.2 Distributions by the Facility Agent**

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (*Distributions to an Obligor*), Clause 27.4 (*Clawback*) and Clause 27.9 (*Payments to the Security Agent*), be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London).

**27.3 Distributions to an Obligor**

The Facility Agent and the Security Agent may (with the consent of the Obligor or in accordance with Clause 28 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

**27.4 Clawback**

- (a) Where a sum is to be paid to the Facility Agent or the Security Agent under the Finance Documents for another Party, the Facility Agent or, as the case may be, the Security Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Facility Agent or the Security Agent pays an amount to another Party and it proves to be the case that it had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid shall on demand refund the same to the Facility Agent or, as the case may be, the Security Agent, together with interest on that amount from the date of payment to the date of receipt by the Facility Agent or, as the case may be, the Security Agent, calculated by it to reflect its cost of funds.

27.5 **Partial Payments**

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agents or the Mandated Lead Arrangers under the Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest or commission due but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment *pro rata* of any Outstandings due but unpaid under this Agreement; and
  - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iii) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

27.6 **No Set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim; except in respect of claims of the Borrower which are either undisputed between the relevant Finance Party and such Obligor or which have been the subject of a final court judgement.

27.7 **Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal at the rate payable on the original due date.

27.8 **Currency of Account**

- (a) Subject to paragraphs (b) to (e) below, the Euro is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than Euro shall be paid in that other currency.

**27.9 Payments to the Security Agent**

Notwithstanding any other provision of any Finance Document, at any time after any of the Transaction Security becomes enforceable, the Security Agent may require:

- (a) any Obligor to pay all sums due from it under any Finance Document; or
  - (b) the Facility Agent to pay all sums received or recovered from any Obligor under any Finance Document,
- in each case as the Security Agent may direct for application in accordance with the terms of the Finance Documents.

**28. SET-OFF**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation (whether matured or not) owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**29. NOTICES**

**29.1 Communications in Writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax, letter or telex.

**29.2 Addresses**

The address, fax number and telex number (and the department or officer, if any, for whose attention the communication is to be made) of each Party, the Guarantor and the Federal/State Guarantors for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below;
- (b) in the case of the Guarantor:

Address: One AMD Place M-S 68  
Sunnyvale, California 94088  
Fax number: +1 408 774 7399  
Attention: General Counsel;

- (c) in the case of each Lender, that notified in writing to the Facility Agent on or prior to the date on which it becomes a Party;

- (d) in the case of the Mandated Lead Arrangers, the Facility Agent and the Security Agent, that identified with its name below;
- (e) in the case of any successor Agent, that notified in writing to the retiring Agent on or prior to the date on which the resignation notice of the retiring Agent takes effect;
- (f) in the case of any successor Security Agent, that notified in writing to the Facility Agent on or prior to the date on which the resignation notice of the retiring Security Agent takes effect; and
- (g) in the case of the Federal/State Guarantors:

Address: c/o PricewaterhouseCoopers Deutsche Revision AG Wirtschaftsprüfungsgesellschaft  
Moskauer Straße 19  
40227 Düsseldorf

Fax Number: +49 211 981 2620

Telephone Number: +49 211 981 2616

Attention: Ursula Putz

or any substitute address, fax number, telex number or department or officer as the Party and/or the Guarantor and/or the Federal/State Guarantors may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, the Guarantor and the Federal/State Guarantors, if a change is made by the Facility Agent) by not less than five (5) Business Days' notice.

### 29.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being sent by international courier addressed to it at that address; or
  - (iii) if by way of telex, when despatched, but only if, at the time of transmission, the correct answerback appears at the start and at the end of the sender's copy of the notice,and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Facility Agent, the Security Agent or the Reporting Agent will be effective only when actually received by it and then only if it is expressly marked for the attention of the department or officer identified with its signature below (or any substitute department or officer as it shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Facility Agent.

- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
- 29.4 **Notification of Address, Fax Number and Telex Number**  
Promptly upon receipt of notification of an address, fax number and telex number or change of address, fax number or telex number pursuant to Clause 29.2 (*Addresses*) or changing its own address, fax number or telex number, the Facility Agent shall notify the other Parties.
- 29.5 **Language**
- (a) Any notice and any other document given under or in connection with any Finance Document must be in English, unless otherwise required by applicable laws or regulations or the Federal/State Guarantors.
- (b) Whichever language is chosen or required for a particular notice or any particular document given under or in connection with any Finance Document shall prevail over that of any accompanying translation.
- 30. CALCULATIONS AND CERTIFICATES**
- 30.1 **Accounts**  
In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.
- 30.2 **Certificates and Determinations**  
Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 30.3 **Day Count Convention**  
Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days.
- 31. PARTIAL INVALIDITY**  
If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 32. REMEDIES AND WAIVERS**  
No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

---

**33. AMENDMENTS AND WAIVERS**

**33.1 Required Consents**

- (a) Subject to Clause 33.2 (*Exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 33.

**33.2 Exceptions**

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of “**Majority Lenders**” in Clause 1.1 (*Definitions*);
  - (ii) the length of the Availability Period;
  - (iii) an extension to the date of payment of any amount under the Finance Documents;
  - (iv) the currency in which any payment under any Finance Document is to be made;
  - (v) a reduction in the Margin or the amount of any payment of principal, interest, fees (except in relation to those paid exclusively to an Agent) or commission payable under this Agreement;
  - (vi) an increase in or extension of any Commitment;
  - (vii) a change to the Borrower or the Guarantor;
  - (viii) any provision which expressly requires the consent of all the Lenders;
  - (ix) Clause 2.2 (*Finance Parties’ Rights and Obligations*), Clause 22 (*Changes to the Lenders*) or this Clause 33; or
  - (x) a release of Security (including, for the avoidance of doubt, any change of the conditions pursuant to which claims can be made under the Guarantee or the Federal/State Guarantee) created pursuant to a Security Document (other than as required by the terms of that Security Document), shall not be made without the prior consent of all the Lenders.
- (b) An amendment or waiver that relates to the rights or obligations of the Facility Agent, the Security Agent, the Reporting Agent or the Mandated Lead Arrangers may not be effected without the consent of the Facility Agent, the Security Agent, the Reporting Agent or the Mandated Lead Arrangers, as the case may be.

---

**34. COUNTERPARTS**

**34.1 Counterparts**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

**34.2 Translation**

This Agreement is translated into the English language. The English translation (without attachments) is attached hereto in Schedule 19 (*English non-binding translation*). However, the German version will at all times be the binding version with respect to the rights and obligations of the parties under this Agreement.

## SECTION 11

### THE FEDERAL/STATE GUARANTEE, GOVERNING LAW AND JURISDICTION

#### 35. THE FEDERAL/STATE GUARANTEE

- (a) The Loans are secured, inter alia, by the Federal/State Guarantee.
- (b) A copy of the Federal/State Guarantors Decision is set out in Schedule 12 (*Federal/State Guarantee Decision*). The terms of the Federal/State Guarantors Decision are a substantive part of this Agreement (*wesentlicher Bestandteil dieses Vertrages*).
- (c) The Parties agree to the terms of the Federal/State Guarantors Decision whether or not expressly included in this Agreement. In particular, the Borrower will not without the prior consent of the Federal/State Guarantor (i) make any material or financial investments, (ii) take over any material new obligations, (iii) sell or dispose of any material parts of its business and (iv) enter into any mergers or demergers cause by the Borrower.
- (d) The Borrower must comply with all the terms of the Federal/State Guarantors Decision (including, but not limited to, Clause 9 (II) 1) of the Federal/State Guarantors Decision) and of the "*Hinweise*" attached hereto in Schedule 18 which directly apply to it. In particular, it will (i) grant the Security set out in the Security Documents under this Agreement und will particularly grant Security with respect to land which is currently not encumbered and/or acquired in the future und which is used for operational purposes, (ii) upon request of the Majority Lenders grant additional Security in case of an impairment (including, but not limited to, by means of depreciation or loss) of the Security so far granted and (iii) in addition to the application fee pay when due any current fees for the Federal/State Guarantee in accordance with Section B of the "*Hinweise*" attached hereto in Schedule 18.
- (e) The Federal/State Guarantors are entitled to delegate the administration of the Federal/State Guarantee to an authorised person.

#### 36. GOVERNING LAW

This Agreement is governed by German law without giving effect to the principles of conflict of laws.

#### 37. JURISDICTION

The District Court of Frankfurt am Main has exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement).

#### 38. CONFIRMATION

The Borrower expressly confirms towards each Finance Party that all funds made available to it under this Agreement will be drawn for its own account, and that it is to be the economic beneficiary (*wirtschaftlich Begünstigter*) within the meaning of Section 8 Money Laundering Act (*Geldwäschegesetz*).

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**



---

**SIGNATURES**

**Borrower**

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG**

*/s/Hans R. Deppe*  
*/s/Robert J. Rivet*

---

**By: Hans R. Deppe**  
**Robert J. Rivet**

**Address: Wilschdorfer Landstrasse 101**  
**01109 Dresden**

**Contact: Sven Eckardt**

**Tel: 0351/277-1001**

**Fax: 0351/277-1099**

**Mandated Lead Arrangers**

**ABN AMRO BANK N.V.**

*/s/J. Rigterink*

---

**Its: J. Rigterink, Executive Director**

**Address: 250 Bishopsgate**  
**London, EC2M 4AA**

**Contact: Mark Vincent, Executive Director – Loan Syndication**

**Tel: ++44 20 7678 5099**

**Fax: ++44 20 7678 5194**

---

COMMERZBANK AKTIENGESELLSCHAFT

/s/Müller-Bühren  
/s/Martusewicz

---

**By:** Müller-Bühren, Department Director;  
Martusewicz, Prokuristin

**Address:** Kaiserplatz  
60261 Frankfurt am Main

**Contact:** Mario Messerschmidt/Ewa Martusewicz

**Tel:** ++49 69 136 29882/++49 69 136 28338

**Fax:** ++49 69 136 29413

DEUTSCHE BANK LUXEMBOURG S.A.

/s/Wolf

---

**By:** Wolf, Vice President

**Address:** 2, Boulevard Konrad Adenauer  
L-1115 Luxembourg

**Contact:** Gerd Meyer/Thomas Schroeter

**Tel:** ++352 42122 296/++352 42122 213

**Fax:** ++352 42122 287

DRESDNER KLEINWORT WASSERSTEIN,  
THE INVESTMENT BANKING DIVISION  
OF DRESDNER BANK AG

/s/William H. Fish  
/s/Leimbach

---

**By:** Fish  
Leimbach

**Address:** Theodor-Heuss-Allee 44-46, 2.OG  
60486 Frankfurt am Main

**Contact:** Loan Syndicate - Execution

**Tel:** ++49 69 713 0

**Fax:** ++49 69 713 19826

---

**KFW**

*/s/Frank Bohnet*  
*/s/Michael Andres*

---

**By:** Frank Bohnet;  
Michael Andres

**Address:** Palmengartenstrasse 5/9  
60325 Frankfurt am Main

**Contact:** Michael Andres

**Tel:** ++49 69 7431 3083

**Fax:** ++49 69 7431 9609

**LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE**

*/s/Pähler*  
*/s/Rohmann*

---

**By:** Ulrich Pähler;  
Martin Rohmann

**Address:** Main Tower  
Neue Mainzer Strasse 52-58  
60311 Frankfurt am Main

**Contact:** Martin Rohmann

**Tel:** ++49 69 9132 4202

**Fax:** ++49 69 9132 4350

---

**LANDESBANK SACHSEN GIROZENTRALE**

/s/Petzold  
/s/Eckert

---

**By:** Petzold;  
Eckert

**Address:** Humboldtstrasse 25  
04105 Leipzig

**Contact:** Tino Petzold/ Chi Le Phan

**Tel:** ++49 341 979 3136/ ++49 341 979 3316

**Fax:** ++49 341 979 3169

**Facility Agent**

**DRESDNER BANK LUXEMBOURG S.A.**

/s/Katja Paul

---

**By** Katja Paul

**Address:** Dresdner Bank Luxembourg S.A.  
26, rue du Marché-aux-Herbes  
L-2097 Luxembourg

**Contact:** Albertine Prellwitz, Katja Paul

**Tel:** +352 4760 864/ +352 4760 992

**Fax:** +352 4760 3222

**Copy to:** Andrea Stockemer, Eva Marmitt

**Tel:** +352 4760 423/ +352 4760 7334

**Fax:** +352 4760 565

---

Security Agent and Reporting Agent

**DRESDNER BANK AG in BERLIN**

/s/ppa. Thomas Schemmann  
/s/Robert v. Finckenstein

---

**By:** Thomas Schemmann;  
Robert von Finckenstein, Director

**Address:** Koppenstraße 92  
10877 Berlin

**Contact:** Hans-Jürgen Dittmann

**Tel:** ++49 30 3153 3006

**Fax:** ++49 30 3153 2317

**Creditors**

**ABN AMRO BANK N.V., NIEDERLASSUNG DEUTSCHLAND**

/s/J. Rigterink

---

**By:** J. Rigterink, Executive Director

**ALLIED IRISH BANK P.L.C.**

/s/Barry Pitcher

---

**By:** Barry Pitcher, Head of Corporate Banking Germany

**BADEN-WÜRTTEMBERGISCHE BANK AG**

/s/Nelgen  
/s/Robert v. Finckenstein

---

**By:** Nelgen, Managing Director;  
Robert von Finckenstein, Director

---

**BAYERISCHE LANDESBANK, MÜNCHEN**

*/s/Nelgen*  
*/s/Robert v. Finckenstein*

---

**By: Nelgen, Managing Director;**  
**Robert von Finckenstein, Director**

**COMMERZBANK AKTIENGESELLSCHAFT, FILIALE  
DRESDEN**

*/s/Müller-Bühren*  
*/s/Martusewicz*

---

**By: Müller-Bühren, Department Director;**  
**Martusewicz, Prokuristin**

**DEUTSCHE BANK LUXEMBOURG S.A.**

*/s/Wolf*

---

**By: Wolf, Vice President**

**DRESDNER BANK AG in BERLIN**

*/s/ppa. Thomas Schemmann*  
*/s/Robert v. Finckenstein*

---

**By: Thomas Schemmann;**  
**Robert von Finckenstein, Director**

**DRESDNER BANK AG, LONDON BRANCH**

*/s/Andreas Scheer*  
*/s/Thomas R. Christopherson*

---

**By: Andreas Scheer, Director;**  
**Thomas R. Christopherson, Director**

---

**DZ BANK AG DEUTSCHE ZENTRAL-  
GENOSSENSCHAFTSBANK,  
FRANKFURT**

*/s/Uta Suffrian*

---

**By: Uta Suffrian, Prokuristin**

**IKB INTERNATIONAL S.A.**

*/s/Hack  
/s/Pillen*

---

**By: Hack, Director;  
Pillen, Abt. Dir.**

**ING BHF-BANK AKTIENGESELLSCHAFT, NIEDERLASSUNG  
LEIPZIG**

*/s/KarenGeorgi  
/s/Ambrosch*

---

**By: Karin Georgi;  
Ambrosch, Bertold**

**KBC BANK DEUTSCHLAND AKTIENGESELLSCHAFT**

*/s/Hergen Frerichs*

---

**By: Hergen Frerichs**

**KFW**

*/s/Frank Bohnet  
/s/Michael Andres*

---

**By: Frank Bohnet;  
Michael Andres**

---

**LANDESBANK BADEN-WÜRTTEMBERG**

*/s/Andreas Scheer*  
*/s/Thomas R. Christopherson*

---

**By: Andreas Scheer, Director;**  
**Thomas R. Christopherson, Director**

**LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE**

*/s/Ulrich Pähler*  
*/s/Martin Rohmann*

---

**By: Ulrich Pähler;**  
**Martin Rohmann**

**LANDESBANK RHEINLAND-PFALZ – GIROZENTRALE**

*/s/H.-J. Menzel*  
*/s/Bruno Bohlinger*

---

**By: H.-J. Menzel, Director;**  
**Bruno Bohlinger, Director**

**LANDESBANK SACHSEN GIROZENTRALE**

*/s/Petzold*  
*/s/Eckert*

---

**By: Petzold;**  
**Eckert**

**NATEXIS BANQUES POPULAIRES, NIEDERLASSUNG DEUTSCHLAND**

*/s/H.-J. Menzel*  
*/s/Bruno Bohlinger*

---

**By: H.-J. Menzel, Director;**  
**Bruno Bohlinger, Director**

**WESTFALENBANK AG**

*/s/Ulrich Clement*

---

**By: Ulrich Clement**



---

**SUBORDINATION AGREEMENT**

---

**dated 20 April 2004**

**between**

**ADVANCED MICRO DEVICES, INC.,  
AMD FAB 36 HOLDING GMBH, AMD FAB 36 ADMIN GMBH,  
LEIPZIGER MESSE GMBH, FAB 36 BETEILIGUNGS GMBH, AMD FAB 36  
LLC**

**and**

**LM BETEILIGUNGSGESELLSCHAFT MBH  
as Partners**

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG  
as Borrower**

**ABN AMRO BANK N.V.,  
COMMERZBANK AKTIENGESELLSCHAFT, DEUTSCHE BANK  
LUXEMBOURG S.A., DRESDNER KLEINWORT WASSERSTEIN, KFW,  
LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE**

**and**

**LANDESBANK SACHSEN GIROZENTRALE  
as Mandated Lead Arrangers**

**DRESDNER BANK LUXEMBOURG S.A.  
as Facility Agent**

**DRESDNER BANK AG IN BERLIN  
as Security Agent**

**and**

**THE FINANCIAL INSTITUTIONS  
listed in Schedule 1**

**Baker & McKenzie  
Frankfurt**

**THIS AGREEMENT** is dated 20 April 2004 and made between

- (1) **Advanced Micro Devices, Inc.**, a corporation organized under the laws of the State of Delaware, United States of America, having its principal place of business in Sunnyvale, California, United States of America (“**AMD**”);
- (2) **AMD Fab 36 Holding GmbH**, Wilschdorfer Landstrasse 101, 01109 Dresden;
- (3) **AMD Fab 36 Admin GmbH**, Wilschdorfer Landstrasse 101, 01109 Dresden;
- (4) **Leipziger Messe GmbH**, Messe-Allee 1, 04356 Leipzig;
- (5) **Fab 36 Beteiligungs GmbH**, Lotterbergstrasse 30, 70499 Stuttgart;
- (6) **AMD Fab 36 LLC**, One AMD Place, Sunnyvale, CA 94088 California, U.S.A.;
- (7) **LM Beteiligungsgesellschaft mbH**, Messe-Allee 1, 04356 Leipzig (together with the parties referred to in (1) through (6), the “**Partners**”);
- (8) **AMD Fab 36 Limited Liability Company & Co. KG**, Wilschdorfer Landstrasse 101, 01109 Dresden (the “**Borrower**”);
- (9) **ABN AMRO Bank N.V., Commerzbank Aktiengesellschaft, Deutsche Bank Luxembourg S.A., Dresdner Kleinwort Wasserstein**, the investment banking division of **Dresdner Bank AG, KfW, Landesbank Hessen-Thüringen Girozentrale und Landesbank Sachsen Girozentrale** as Mandated Lead Arrangers (the “**Mandated Lead Arrangers**”);
- (10) **Dresdner Bank Luxembourg S.A.** as Facility Agent (the “**Facility Agent**”);
- (11) **Dresdner Bank AG in Berlin** as Security Agent (the “**Security Agent**”); and
- (12) **the financial institutions** listed in Schedule I.

**WHEREAS:**

- (A) The Borrower has been formed for the purpose of constructing, owning and operating a 300 mm silicon wafer microprocessor fabrication facility located at Wilschdorfer Landstrasse 101 in 01109 Dresden.
- (B) AMD Fab 36 Holding GmbH, Leipziger Messe GmbH (upon signing of the Partnership Agreement and the registration of Leipziger Messe GmbH and Fab

- 
- 36 Beteiligungs GmbH as limited partners of the Borrower with the commercial register), Fab 36 Beteiligungs GmbH (upon signing of the Partnership Agreement and the registration of Leipziger Messe GmbH and Fab 36 Beteiligungs GmbH as limited partners of the Borrower with the commercial register) and AMD Fab 36 Admin GmbH are limited partners of the Borrower, and AMD Fab 36 LLC and LM Beteiligungsgesellschaft mbH (upon signing of the Partnership Agreement and the registration of Leipziger Messe GmbH and Fab 36 Beteiligungs GmbH as limited partners of the Borrower with the commercial register) are general partners of the Borrower.
- (C) AMD (through AMD Fab 36 Holding GmbH), Leipziger Messe GmbH, Fab 36 Beteiligungs GmbH and AMD Fab 36 Admin GmbH have made or will make and/or have committed or will commit to make available to the Borrower paid-in partnership capital in amounts of EUR 585,000,000, EUR 120,000,000, EUR 60,000,000 and EUR 362,000, respectively, by way of a partnership agreement (the “**Partnership Agreement**”) dated on or about the date hereof. Leipziger Messe GmbH and Fab 36 Beteiligungs GmbH will furthermore make available to the Borrower amounts of EUR 80,000,000 and EUR 60,000,000, respectively, by way of contributions to a silent partnership entered into with the Borrower by way of a silent partnership agreement (the “**Silent Partnership Agreement**”) dated on or about the date hereof. In addition, AMD will make available equity and/or subordinated loans under the Revolving Credit Agreement (as defined below) in a total amount of EUR 750,000,000. In connection therewith, AMD, Leipziger Messe GmbH and Fab 36 Beteiligungs GmbH have entered into a Cooperation Agreement (*Kooperationsvertrag*) (the “**Cooperation Agreement**”) dated 20 November 2003.
- (D) The Mandated Lead Arrangers and the financial institutions listed in Schedule 1 (together with all other banks, financial institutions, trusts, funds or other entities which have become a party as lenders to the Facility Agreement, the “**Lenders**”) will make available to the Borrower a secured term loan facility in an amount of EUR 700,000,000 (the “**Facility**”) pursuant to a Term Loan Facility Agreement dated on or about the date hereof (the “**Facility Agreement**”), and the obligations of the Borrower under the Facility Agreement will be guaranteed by AMD under a Guarantee Agreement (the “**Guarantee Agreement**”) of even date therewith.
- (E) Pursuant to the Facility Agreement, the facilities made available pursuant to the terms thereof shall have priority over, and shall rank before, all claims of the Partners against the Borrower, subject to the provisions set out in this Subordination Agreement.

---

**IT IS AGREED as follows:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Subordination Agreement

“**Affiliate**” means “*Verbundenes Unternehmen*” (Affiliate), as this term is defined in the Facility Agreement.

“**Auditors**” means “*Wirtschaftsprüfer*” (Auditors), as this term is defined in the Facility Agreement.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Frankfurt am Main, Berlin, Dresden, London and Luxembourg and, in relation to a payment date, any TARGET Day.

“**Cash**” means “*Barmittel*” (Cash), as this term is defined in the Facility Agreement.

“**Cash Equivalents**” means “*Barmitteln Vergleichbare Anlagen*” (Cash Equivalents, as this term is defined in the Facility Agreement).

“**Cost Plus Reimbursement Agreement**” means “*Cost Plus–Kostenerstattungsvertrag*” (Cost Plus Reimbursement Agreement), as this term is defined in the Facility Agreement.

“**Credit Rating**” means “*Rating*”, as this term is defined in the Facility Agreement.

“**Default**” means “*Kündigungstatbestand*” (Default), as this term is defined in the Facility Agreement.

“**Escrow Account**” means “*Sonderkonto*” (Escrow Account), as this term is defined in the Facility Agreement.

“**Event of Default**” means “*Kündigungsgrund*” (Event of Default), as this term is defined in the Facility Agreement.

“**Excess Contributed Capital Amounts**” means “*Zusätzliches Eigenkapital*” (Excess Contributed Capital Amounts), as this term is defined in the Facility Agreement.

“**Federal/State Guarantors Decision**” means “*Bürgschaftsentscheidung*” (Federal/State Guarantors Decision), as this term is defined in the Facility Agreement.

“**Finance Documents**” means “*Finanzierungsdokumente*” (Finance Documents), as this term is defined in the Facility Agreement.

“**Finance Parties**” means “*Finanzierungsparteien*” (Finance Parties), as this term is defined in the Facility Agreement.

---

“**Group**” means “*Gruppe*” (Group), as this term is defined in the Facility Agreement.

“**Holding Company**” means “*Holdingsgesellschaft*” (Holding Company), as this term is defined in the Facility Agreement.

“**Liabilities**” means all present and future sums and payment obligations, whether actual or contingent, owing or payable by the Borrower to any of the Finance Parties under the Finance Documents.

“**Limited Partners**” means “*Kommanditisten*” (Limited Partners), as this term is defined in the Facility Agreement.

“**Majority Lenders**” means “*Kreditgebermehrheit*” (Majority Lenders), as this term is defined in the Facility Agreement.

“**Management Service Agreement**” means “*Geschäftsbesorgungsvertrag*” (Management Service Agreement), as this term is defined in the Facility Agreement.

“**Minimum Cash**” means “*Mindestbarmittel*” (Minimum Cash), as this term is defined in the Facility Agreement.

“**Net Profits**” means “*Nettogewinn*” (Net Profits), as this term is defined in the Facility Agreement.

“**Outstandings**” means “*Ausstehender Kreditbetrag*” (Outstandings), as this term is defined in the Facility Agreement.

“**Participations**” means “*Beteiligungen*” (Participations), as this term is defined in the Facility Agreement.

“**Project Documents**” means “*Projektdokumente*” (Project Documents), as this term is defined in the Facility Agreement.

“**Purchase Agreements**” means “*Kaufverträge*” (Purchase Agreements), as this term is defined in the Facility Agreement.

“**Rating**” has the meaning ascribed to such term in the Facility Agreement.

“**Revolving Credit Agreement**” means “*Gesellschafter-Bankreditvertrag*” (Revolving Credit Agreement), as this term is defined in the Facility Agreement.

“**Security Documents**” means “*Sicherheitendokumente*” (Security Documents), as this term is defined in the Facility Agreement.

“**Subordinated Liabilities**” means all present and future sums and payment obligations, whether actual or contingent, owing or payable (i) by the Borrower to the Partners (or any of them) or AMD in connection with loans or

other financing arrangements (including, but not limited to, the Revolving Credit Agreement and the Subordinated Loan Agreement) made with, all guarantees and sureties issued at the request or in the interest of, the Borrower, repayments of paid-in capital, redemption of partnership interests or shares, termination or withdrawals of partners or shareholders, partners' accounts, dividends or for any other reason, or (ii) by AMD to Leipziger Messe GmbH, Fab 36 Beteiligungs GmbH and/or LM Beteiligungsgesellschaft mbH or any affiliates thereof in connection with guarantees or sureties issued or undertakings made in connection with the partnership interests, silent participations and other rights and obligations agreed pursuant to the Partnership Agreement, the Silent Partnership Agreement, the Cooperation Agreement and other agreements made in relation thereto.

“**Subordinated Loan Agreement**” means “*Gesellschafter-Tilgungskreditvertrag*” (Subordinated Loan Agreement), as this term is defined in the Facility Agreement.

“**Tax**” means “*Steuer*” (Tax), as this term is defined in the Facility Agreement.

“**TARGET**” means Trans-European Automated Real-time Gross Settlement Express Transfer payment system.

“**TARGET Day**” means any day on which TARGET is open for the settlement of payments in Euro.

“**Total Commitments**” means “*Gesamtkreditzusagen*” (Total Commitments), as this term is defined in the Facility Agreement.

“**Utilisation**” means a utilisation of the Facility.

1.2 The expressions “**Mandated Lead Arrangers**”, “**Facility Agent**” and “**Security Agent**” shall, where the context permits, include all of such parties' respective successors and assigns under the Finance Documents.

1.3 In this Subordination Agreement, unless the context requires otherwise,

- (a) references to provisions of any law or regulation shall be construed as references to any such provisions as the same may be amended, modified, re-enacted or replaced from time to time;
- (b) references to this Subordination Agreement, the Finance Documents or to any of them shall be construed as references to this Subordination Agreement or any such document as the same may be amended, supplemented, restated or varied from time to time;
- (c) save where the contrary is indicated, the singular of any defined term shall be construed as the reference to the plural where the plural is used, and vice versa.

---

## 2. SUBORDINATION

- 2.1 From the date of the first Utilisation, and except as expressly provided otherwise in this Subordination Agreement, each of the Partners and the Borrower hereby agree that the Subordinated Liabilities shall irrevocably be subordinated to, and shall rank behind in right of payment, the Liabilities, in accordance with and subject to the terms of this Subordination Agreement. The subordination of the Subordinated Liabilities pursuant to this Subordination Agreement shall remain unaffected by any change of the legal form of any Partner or the Borrower.
- 2.2 From the date of the first Utilisation, and until payment and discharge in full of the Liabilities, the Partners undertake not to make any payment, nor effect a discharge in any other way, nor grant any security interests, in respect of the Subordinated Liabilities, nor shall the Partners, individually or collectively, claim or receive any payment or any security interests from the Borrower or any third party, or commence any proceedings against the Borrower or take any action in respect of the Subordinated Liabilities (other than with the sole aim of obtaining a declaratory judgment or court order protecting intellectual property rights other than by way of seeking money judgments (provided however that such money judgments can be pursued without limitation from the time all actual or contingent obligations under the Guarantee Agreement have been performed or have otherwise ceased to exist, or earlier if all rights in payment thereunder (a) are exercised to the effect that all amounts payable by the Borrower shall be paid to the Security Agent and (b) have been assigned to the Security Agent for the purpose of securing all claims under the Guarantee Agreement)) save with the prior written consent of the Lenders, **provided**, however, that as long as no Default (in case of subparagraph (ix) and (x) below, only to the extent that the occurrence of such Default is not dependent on a determination under any of the Finance Documents), Event of Default or Payment Default (as defined below) has occurred and is continuing, there are excepted from the foregoing provisions of this Section 2:
- (i) payments made by the Borrower on an arms' length basis pursuant to Article 2 of the Management Service Agreement;
  - (ii) payments made to AMD Fab 36 Holding GmbH, or any other settlement effected by AMD Fab 36 Holding GmbH in respect of amounts owing by the Borrower, pursuant to Article 2.6 of the AMD Fab 36 Cost Plus Reimbursement Agreement dated on or about the date hereof among AMD Fab 36 Holding GmbH and the Borrower;
  - (iii) payments due and made in respect of equipment purchases from AMD on an "at cost" basis and not exceeding in the aggregate an amount of EUR 30,000,000;
  - (iv) as long as the Rating is B3 or better by Moody's and B- or better by Standard & Poor's, payments of principal (but not interest) under the Revolving Credit Agreement;

- 
- (v) as long as the Rating is Caa1 or better by Moody's and CCC+ or better by Standard & Poor's, distribution of annual profits made in accordance with Clauses 9.5.3, 9.5.4 and 9.7 of the Partnership Agreement and Clauses 5.5.1, 5.5.2 and 5.7 of the Silent Partnership Agreement to Limited Partners who are not members of the Group in respect of their partnership interests in the Borrower and in respect of Participations, in an amount not exceeding 13 % *per annum* of their respective paid-in capital shares (*Pflichtkapital*) or capital contributions made in respect of Participations, subject to the requirements of the Facility Agreement;
  - (vi) payments made to AMD Fab 36 LLC and LM Beteiligungsgesellschaft mbH in compensation of their obligations as general partners under the Partnership Agreement, in a total amount of up to the equivalent of USD 75,000 per annum (plus applicable VAT);
  - (vii) provided that the Outstandings and Total Commitments under the Facility Agreement amount to EUR 250,000,000 or less, repayments of partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations, and distributions of Net Profits converted into equity ("**Converted Capital**"), made to Limited Partners who are not members of the Group in accordance with the Partnership Agreement, the Silent Partnership Agreement, the Purchase Agreements and the Federal/State Guarantors Decision, from the excess of (a) the sum of Cash and Cash Equivalents of the Borrower over (b) the sum of the Borrower's Minimum Cash, any amounts held in the Escrow Account, the amount of outstandings under the Revolving Credit Agreement, prepayments made under the Cost Plus Reimbursement Agreement (this does not apply to prepayments made when due under the Cost Plus Reimbursement Agreement) and EUR 100,000,000;
  - (viii) after 31 December 2005, repayments, or payments made in respect of the transfer, of partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations made to Limited Partners who are not members of the Group in accordance with the Partnership Agreement, the Silent Partnership Agreement, the Purchase Agreements and the Federal/State Guarantors Decision in amounts made available to the Borrower by AMD concurrently under a Subordinated Loan Agreement in addition to the amounts required pursuant to the condition set out in Schedule 2 Part II subclause (d)(i)(A) of the Facility Agreement, or by means of Excess Contributed Capital Amounts.
  - (ix) payments to Limited Partners necessary to permit the Limited Partners, or any Holding Company of the Limited Partners on their behalf, to pay when due and payable any amounts of German income taxes required to be paid by the Limited Partners on their income on the annual profits of the partnership as partners of the Borrower and on the annual profits from the Participations; and



- (x) payments (*Auszahlungen*) (by way of dividends, repurchase, redemption or otherwise) by the Borrower to AMD Fab 36 Holding GmbH or any Holding Company or Affiliate thereof on its behalf, in amounts not exceeding the aggregate of Excess Contributed Capital Amounts (other than those made for the purpose described in paragraph (viii) above), provided that if and when such payments are made the Credit Rating must be B3 or better by Moody's Investors Service, Inc. and B- or better by Standard & Poor's Corporation.

If the Cost-Plus Reimbursement Agreement or the Management Service Agreement is terminated for any reason whatsoever, the Borrower shall be permitted to credit the amounts payable thereunder against the amounts receivable by it thereunder strictly in accordance with the terms of each such Project Document.

- 2.3 In addition to the foregoing provisions of this Section 2, and subject to the exceptions as set out therein, each of the Partners hereby subordinates its claims against the Borrower arising under or in connection with Subordinated Liabilities to the claims of all other present and future creditors of the Borrower, provided that the subordination under this sentence shall not apply to any such claims as long as and to the extent that omitting such claims from the subordination under this sentence will not result in, or lead to an increase of, an overindebtedness of the Borrower within the meaning of Section 19 Insolvency Act (*Insolvenzordnung*), to be determined on the basis of the Borrower's statement of affairs (*Vermögensstatus*) as per any relevant point in time or, if applicable, in an opening or closing liquidation balance sheet (*Liquidationseröffnungs-, -schlussbilanz*). For the purposes of determining whether a repayment of principal or the payment of interest by the Borrower is permitted under this paragraph, the value of the assets and liabilities of the Borrower to be included in the relevant statement of affairs shall always be determined by the managing directors and confirmed by the Auditors in accordance with the applicable rules. The Partners shall not be entitled to make payment claims in respect of the Subordinated Liabilities as long as there is an overindebtedness of the Borrower within the above meaning, or as long as there is not a liquidation surplus, or in an insolvency proceeding over the assets of the Borrower, it being understood that the Partners' claims shall rank behind all other creditors in case of any insolvency proceeding which is governed by the provisions of the Insolvency Act (*Insolvenzordnung*).

### 3. UNDERTAKINGS OF THE PARTNERS

- 3.1 From the date of the first Utilisation, each of the Partners hereby undertakes towards each of the Finance Parties not to assign, pledge or otherwise dispose of their rights in respect of the Subordinated Liabilities (whether by set-off, drawings under bills of exchange or by agreeing to subordinate any of the Subordinated Liabilities to the claims of other creditors of the Borrower), except for assignments or pledges of claims and rights which are excepted pursuant to paragraphs (v), (vii) and (viii) of Clause 2.2 for the purpose of securing lenders to Limited Partners who are not members of the Group, and

- otherwise save as permitted pursuant to Clause 2 hereof or with the prior written consent of the Lenders. Each of the Partners hereby agrees and covenants with the Borrower that the foregoing limitations and prohibitions shall also apply among each Partner and the Borrower, and that any assignment of any Subordinated Liabilities to a third party other than as expressly permitted in this Agreement shall have no effect.
- 3.2 If any payment or transfer of funds or assets is made by the Borrower to any Partner in breach of this Clause 3, each Partner having received any such payment, funds or other assets from the Borrower shall promptly pay or transfer to the Security Agent (acting on behalf of the Finance Parties) any and all such sums, funds or assets which shall be held in trust by the Security Agent for the Finance Parties, and which shall be applied in payment towards the Liabilities as determined by the Facility Agent in accordance with the Finance Documents and, in particular, any security trust agreements made among or applicable to the Finance Parties. The Partners and the Borrower hereby agree that any payments, funds or assets made available to any of the Partners in breach of this Clause 3 shall be deemed to not have discharged, and released, the relevant underlying liability of the Borrower towards the relevant Partner.
- 3.3 If any of the Liabilities in respect of principal or interest remains unpaid for a period of more than five (5) Business Days after its due date (a “**Payment Default**”), or if a Default or Event of Default has occurred and is continuing, any Partner who is a member of the Group may, and shall at the request of the Facility Agent (acting on the instructions of the Majority Lenders),
- (i) exercise any of its rights in payment or otherwise against the Borrower to the effect that all amounts (but in the case of the amounts referred to in Sub-Clause 2.2(ix) hereof, only when an Event of Default or Default has occurred and is continuing) payable by the Borrower shall be paid to the Security Agent (acting on behalf of the Finance Parties), and
  - (ii) (only in case of an Event of Default) agree to assign for security purposes its payment claims to the extent not already assigned under the Security Documents in respect of Subordinated Liabilities against the Borrower to the Security Agent and/or any of the Finance Parties for the purpose of discharging any Liabilities in respect of principal or interest which are due but unpaid. The Security Agent and the Finance Parties shall release any payments, proceeds and claims received under this provision when a Payment Default, Default or Event of Default is no longer continuing.
- 3.4 The Partners agree that, from the date of the first Utilisation, and except as permitted pursuant to Clauses 2.2 and 3.3 hereof, no profit distributions, no repayments of capital or of any other funds shall be made available by the Borrower to any Partner or any third party on behalf of any Partner, and that no payments to that effect shall be requested, be initiated or made to, or accepted by, any of the Partners prior to the discharge in full of the Liabilities.

- 
- 3.5 Without prejudice to the rights of purchase and sale in respect of partnership interests or silent partnership interests as provided in the Partnership Agreement or the Silent Partnership Agreement, the Partners undertake to ensure, to the best of their respective capabilities, that until discharge in full of the Liabilities the legal and the equity interest structure of the Borrower as disclosed to the Lenders as at the date of the Facility Agreement will remain unchanged, save as otherwise agreed with the Lenders.
- 3.6 The Partners who are members of the Group undertake to cause the Borrower to comply with all obligations in respect of the Liabilities, and with any agreements made to that effect.

**4. TRANSFERS**

Each Lender shall be entitled to assign or transfer any of its rights and obligations under this Subordination Agreement to any party to which its rights and obligations under the Facility Agreement are assigned and transferred in accordance with the provisions thereof, provided that the relevant assignee agrees in writing prior to any such assignment to become a party to this Subordination Agreement, and to assume all rights and obligations of the assignor hereunder without any limitation or restriction. The parties to this Subordination Agreement confirm that any person becoming a Lender in accordance with the terms of the Facility Agreement shall be entitled to the benefit of the provisions contained herein as if it had been originally named a party hereto, and each party makes an irrevocable offer to that effect to each such person.

**5. MISCELLANEOUS**

- 5.1 Any declarations or communication to be made by or to the Finance Parties in relation to this Subordination Agreement shall be made by or to the Security Agent in its capacity as agent for the Finance Parties, in accordance with the terms of the Facility Agreement.
- 5.2 Any notice or communication to be made under or in connection with this Agreement shall be in writing and shall be delivered personally or by registered letter, courier or facsimile to the addresses set out on the execution pages hereof.
- 5.3 All supplements to and amendments of this Subordination Agreement (including this Clause 5.3) shall be effective only when made in writing.
- 5.4 The invalidity or unenforceability of one or more provisions of this Subordination Agreement shall not affect the validity or enforceability of any other provisions of this Subordination Agreement. Any invalid or unenforceable provision shall be substituted by a provision which approximates most closely the economic purpose of the invalid or unenforceable provision. The same shall apply accordingly in case of any omissions.

- 
- 5.5 This Subordination Agreement shall be governed by the laws of Germany.
- 5.6 The courts of Frankfurt am Main shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this Subordination Agreement (including a dispute regarding the existence, validity or termination of this Subordination Agreement).
- 5.7 Without prejudice to any other mode of service allowed under any relevant law, each of the Partners hereby irrevocably appoints the Borrower (which accepts) as its agent for service of process in relation to any proceedings before the German courts in connection with this Subordination Agreement, and agrees that failure by a process agent to notify any relevant party of the process will not invalidate the proceedings concerned.

*[schedule to follow]*

---

**SIGNATURES**

**ADVANCED MICRO DEVICES, INC.**

As Partner

Date: 20 April 2004

by: **/s/ Kelly Smales**

---

Name, title: Kelly Smales, Treasurer

**AMD FAB 36 HOLDING GMBH**

As Partner

Date: 20 April 2004

by: **/s/ Grabbe**

---

Name, title: Hartwig Grabbe, Attorney in Fact

**AMD FAB 36 ADMIN GMBH**

As Partner

Date: 20 April 2004

by: **/s/ Grabbe**

---

Name, title: Hartwig Grabbe, Attorney in Fact

**LEIPZIGER MESSE GMBH**

As Partner

Date: 20 April 2004

by: **/s/ i.V. Harald Amer**

---

Name, title:

---

**FAB 36 BETEILIGUNGS GMBH**

As Partner

Date: 20 April 2004

by: /s/ i.V. Harald Amer

Name, title:

**AMD FAB 36 LLC**

As Partner

Date: 20 April 2004

by: /s/ Kelly Smales

Name, title: Kelly Smales, Attorney in Fact

**LM BETEILIGUNGSGESELLSCHAFT MBH**

As Partner

Date: 20 April 2004

by: /s/ i.V. Harald Amer

Name, title:

**The Borrower**

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG**

Date: 20 April 2004

by: /s/ Grabbe

Name, title: Hartwig Grabbe, Attorney in Fact

---

**The**

**MANDATED LEAD ARRANGERS**

Date: 20 April 2004

by: /s/ Thomas R. Christopherson

Name, title: Thomas R. Christopherson, Director

**The Facility Agent**

**DRESDNER BANK LUXEMBOURG S.A.**

Date: 20 April 2004

by: /s/ Menzel

Name, title: H.-J. Menzel, Director

**The Security Agent**

**DRESDNER BANK AG in BERLIN**

Date: 20 April 2004

by: /s/ W. A. Kittner

Name, title: W. A. Kittner, VP

**The**

**FINANCIAL INSTITUTIONS listed in Schedule 1**

Date: 20 April 2004

by: /s/ v. Finckenstein

Name, title: Robert von Finckenstein, Director

---

**GUARANTEE AGREEMENT**

---

**dated 21 April 2004**

**between**

**ADVANCED MICRO DEVICES, INC.**

**the Guarantor**

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG**

**the Borrower**

**DRESDNER BANK AG in Berlin  
as Security Agent**

**and**

**DRESDNER BANK LUXEMBOURG S.A.  
as Facility Agent**

**Baker & McKenzie**

**Frankfurt**



---

CONTENTS

| <u>Clause</u>                            |                                | <u>Page</u> |
|--|--------------------------------|-------------|
| 1.                                       | DEFINITIONS AND INTERPRETATION | 1           |
| 2.                                       | GUARANTEE                      | 9           |
| 3.                                       | PAYMENT ON FIRST DEMAND        | 9           |
| 4.                                       | PRIMARY OBLIGATION             | 9           |
| 5.                                       | CONTINUING SECURITY            | 9           |
| 6.                                       | UNCONDITIONAL GUARANTEE        | 10          |
| 7.                                       | TAXES                          | 11          |
| 8.                                       | CURRENCY INDEMNITY             | 13          |
| 9.                                       | CLAIMS BY GUARANTOR            | 13          |
| 10.                                      | REPRESENTATIONS AND WARRANTIES | 14          |
| 11.                                      | INFORMATION UNDERTAKINGS       | 23          |
| 12.                                      | FINANCIAL COVENANTS            | 26          |
| 13.                                      | GENERAL UNDERTAKINGS           | 30          |
| 14.                                      | SET-OFF                        | 37          |
| 15.                                      | MISCELLANEOUS                  | 37          |
| 16.                                      | NOTICES                        | 37          |
| 17.                                      | FURTHER ASSURANCE              | 39          |
| 18.                                      | PARTIAL INVALIDITY             | 39          |
| 19.                                      | AMENDMENTS                     | 39          |
| 20.                                      | COUNTERPARTS                   | 39          |
| 21.                                      | ASSIGNMENT                     | 39          |
| 22.                                      | CONFIDENTIALITY                | 40          |
| 23.                                      | GOVERNING LAW                  | 40          |
| 24.                                      | ENFORCEMENT                    | 40          |
| <br><u>Schedules</u>                     |                                |             |
| <br>                                     |                                |             |
| SCHEDULE 1                               |                                | 42          |
| HEDGING STRATEGY                         |                                | 42          |
| SCHEDULE 2                               |                                | 43          |
| FORM OF COMPLIANCE CERTIFICATE           |                                | 43          |
| SCHEDULE 3                               |                                | 45          |
| FORM OF MONTHLY CONSOLIDATED CASH REPORT |                                | 45          |

**THIS GUARANTEE AGREEMENT** is dated 21 April 2004 and made between:

- (1) **Advanced Micro Devices, Inc.**, a corporation organised under the laws of the state of Delaware, United States of America, having its principal place of business in Sunnyvale, California, United States of America (the "**Guarantor**");
- (2) **AMD Fab 36 Limited Liability Company & Co. KG**, a German limited partnership with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRA 5255 (the "**Borrower**");
- (3) **Dresdner Bank AG in Berlin** as Security Agent under German law pursuant to and in accordance with Clause 24.1 (*Appointment of the Facility Agent and the Security Agent*) of the Facility Agreement (the "**Security Agent**"); and
- (4) **Dresdner Bank Luxembourg S.A.** as Facility Agent for the Lenders pursuant to and in accordance with Clause 24.1 (*Appointment of the Facility Agent and the Security Agent*) of the Facility Agreement (the "**Facility Agent**").

**WHEREAS:**

- (A) The Lenders have agreed to make available to the Borrower a term facility on the terms of and subject to the Facility Agreement (as defined below).
- (B) It is a condition to the Lenders making the Facility available that the Guarantor enters into this Guarantee Agreement.
- (C) The Guarantor enters into this Guarantee Agreement in favour of the other parties hereto in order to ensure that the Finance Parties shall receive payment of all amounts expressed to be payable by the Borrower under the Facility Agreement, any other Finance Document to which it is a party or the Subsidy Agreements in the currency and at the place provided therein at its stated or accelerated maturity and irrespective of the factual or legal circumstances and motives by reason of which the Borrower may fail to pay the Guarantor's Liabilities (as each are defined below).

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Guarantee Agreement:

"**Agent**" means "*Agent*" (Agent), as this term is defined in the Facility Agreement.

"**Auditor**" means "*Wirtschaftsprüfer*" (Auditor), as this term is defined in the Facility Agreement.

"**Authorisation**" means "*Genehmigung*" (Authorisation), as this term is defined in the Facility Agreement.

"**Base Financial Statement**" means "*Basis-Abschlüsse*" (Base Financial Statement), as this term is defined in the Facility Agreement.

---

“**Borrower**” means AMD Fab 36 Limited Liability Company & Co. KG.

“**Business Day**” means “*Bankarbeitstag*” (Business Day), as this term is defined in the Facility Agreement.

“**Business Plan**” means “*Geschäftsplan*” (Business Plan), as this term is defined in the Facility Agreement.

“**Cash Shortfalls**” means “*Barmittel-Defizite*” (Cash Shortfalls), as this term is defined in the Facility Agreement.

“**Charged Assets**” means “*Besichertes Vermögen*” (Charged Assets), as this term is defined in the Facility Agreement.

“**Collateral Security**” means any Security provided or assumed by a person in favour of the Security Agent securing the Guarantor’s Liabilities, whether generally or to a limited extent only and whether created or entered into before, on or after the date of this Guarantee Agreement.

“**Commitment**” means “*Kreditzusage*” (Commitment), as this term is defined in the Facility Agreement.

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 2 (*Form of Compliance Certificate*).

“**Credit Rating**” means “*Rating*” (Credit Rating), as this term is defined in the Facility Agreement.

“**Dangerous Substance**” means “*Gefährliche Substanzen*” (Dangerous Substance), as this term is defined in the Facility Agreement.

“**Default**” means “*Kündigungstatbestand*” (Default), as this term is defined in the Facility Agreement.

“**Environment**” means “*Umwelt*” (Environment), as this term is defined in the Facility Agreement.

“**Environmental Claim**” means “*Umweltansprüche*” (Environmental Claim), as this term is defined in the Facility Agreement.

“**Environmental Contamination**” means each of the following and their consequences:

- (a) any release, discharge, emission, leakage or spillage of any Dangerous Substance at or from any site owned, leased, occupied or used by the Guarantor into any part of the Environment; or
- (b) any accident, fire, explosion or sudden event at any site owned, leased, occupied or used by the Guarantor which is directly or indirectly caused by or attributable to any Dangerous Substance; or
- (c) any other pollution of the Environment arising at or from any site owned or occupied by the Guarantor.

“**Environmental Law**” means “*Umweltrecht*” (Environmental Law), as this term is defined in the Facility Agreement.

“**Environmental Licence**” means “*Umweltgenehmigung*” (Environmental Licence), as this term is defined in the Facility Agreement.

“**Equipment**” means “*Anlagen*” (Equipment), as this term is defined in the Facility Agreement.

“**EU Notification Approval**” means “*EU-Genehmigung*” (EU Notification Approval), as this term is defined in the Facility Agreement.

“**Event of Default**” means “*Kündigungsgrund*” (Event of Default), as this term is defined in the Facility Agreement.

“**Facility**” means “*Kredit*” (Facility), as this term is defined in the Facility Agreement.

“**Facility Agreement**” means a term loan facility agreement of up to EUR700,000,000 dated on or about the date of this Guarantee Agreement made amongst, *inter alia*, the Borrower, the Lenders, Dresdner Bank Luxembourg S.A. as Facility Agent and Dresdner Bank AG in Berlin as Security Agent and Reporting Agent (the “**Facility Agreement**”).

“**Federal/State Guarantee**” means “*Bundes/Landesbürgschaft*” (Federal/State Guarantee), as this term is defined in the Facility Agreement.

“**Federal/State Guarantor Decision**” means “*Bürgschaftsentscheidung*” (Federal/State Guarantor Decision), as this term is defined in the Facility Agreement.

“**Federal/State Guarantors**” means “*Bundes-/Landesbürgen*” (Federal/State Guarantors), as this term is defined in the Facility Agreement.

“**Finance Documents**” means this Guarantee Agreement, the Facility Agreement, any Fee Letter, any other Security Document and any other document designated as such by the Facility Agent and the Borrower and “**Finance Document**” means any of them.

“**Facility Office**” means “*Kreditgeschäftsstelle*” (Facility Office), as this term is defined in the Facility Agreement.

“**Fee Letters**” means “*Gebührenvereinbarungen*” (Fee Letters), as this term is defined in the Facility Agreement.

“**Finance Party**” means “*Finanzierungspartei*” (Finance Party), as this term is defined in the Facility Agreement.

“**Financial Indebtedness**” means “*Finanzverbindlichkeit*” (Financial Indebtedness), as this term is defined in the Facility Agreement.

“**General Partner**” means “*Komplementär*” (General Partner), as this term is defined in the Facility Agreement.

“**German Subsidiaries**” means, collectively or, where the context requires, individually, each Subsidiary of the Guarantor incorporated, established or formed in Germany.

“**Group**” means “*Gruppe*” (Group), as this term is defined in the Facility Agreement.

“**Group Consolidated Cash**” means for any fiscal month the amount of all cash, cash equivalents and short term investments of the Guarantor and of all its Subsidiaries, calculated employing the same method applied in calculating the annual audited and quarterly unaudited consolidated financial statements of the Guarantor, less the aggregate amount of all outstandings under any third-party revolving credit facility agreement (or third-party term loan agreement for borrowed money with an original maturity of up to one (1) year) of any member of the Group.

“**Group Permitted Business**” means, in relation to the Guarantor and the Group collectively, the design, development, manufacture and marketing of integrated circuits, together with any activity which is ancillary or incidental to any of the above.

“**Guarantee**” means the irrevocable and unconditional guarantee issued by the Guarantor pursuant to the terms of this Guarantee Agreement.

“**Guaranteed Liabilities**” means all and any sums that may now be, or might at any time in the future become, due, owing, incurred or payable, whether actually or contingently, by the Borrower to the Finance Parties under or pursuant to the Facility Agreement or any other Finance Document to which the Borrower is a party including, without limitation, on account of principal, interest, fees, expenses, indemnity payments, losses or damages and irrespective of:

- (a) the capacity (whether as principal, agent, trustee, beneficiary, partner or otherwise) of the Borrower or any Finance Party;
- (b) whether the Borrower is liable as principal debtor or as surety;
- (c) whether the Borrower is liable alone or jointly and/or severally with any other person; and
- (d) whether originally owing to a Finance Party or purchased or otherwise acquired by it in accordance with the terms of the Facility Agreement.

“**Guarantor’s Liabilities**” means the Guaranteed Liabilities and the Indemnified Liabilities.

“**Hedging Strategy**” means “*Hedgingstrategie*” (Hedging Strategy), as this term is defined in the Facility Agreement.

“**Indemnified Liabilities**” means all and any sums that may now be, or might at any time in the future become, due, owing, incurred or payable, whether actually or contingently, by the Borrower under or pursuant to the Subsidy Agreements as a result of any repayment claim brought by the Federal Republic of Germany or the Free State of Saxony (*Freistaat Sachsen*) in connection with any public allowances or grants (*Investitionszuschüsse/ Investitionszulagen*) provided to the Borrower including, without limitation, on account of principal, interest, fees, expenses, indemnity payments, losses or damages and irrespective of:

- (a) the capacity (whether as principal, agent, trustee, beneficiary, partner or otherwise) of the Borrower or the Security Agent;
- (b) whether the Borrower is liable as principal debtor or as surety; and
- (c) whether the Borrower is liable alone or jointly and/or severally with any other person.

“**Information Memorandum**” means “*Information Memorandum*” (Information Memorandum), as this term is defined in the Facility Agreement.

“**Insolvency**” in relation to any person, refers to that person undergoing or being subject to any winding-up, bankruptcy, receivership, administration, re-organisation, scheme of arrangement or composition, moratorium, assignment for the benefit of creditors or any analogous event or proceeding.

“**Insurance Adviser**” means “*Versicherungsberater*” (Insurance Adviser), as this term is defined in the Facility Agreement.

“**Insurance Report**” means “*Versicherungsbericht*” (Insurance Report), as this term is defined in the Facility Agreement.

“**Intellectual Property**” means “*Geistiges Eigentum*” (Intellectual Property), as this term is defined in the Facility Agreement.

“**Intellectual Property Rights**” means “*Immaterialgüterrechte*” (Intellectual Property Rights), as this term is defined in the Facility Agreement.

“**Interest Period**” means “*Zinsperiode*” (Interest Period), as this term is defined in the Facility Agreement.

“**Lender**” means “*Kapitalgeber*” (Lender), as this term is defined in the Facility Agreement.

“**Limited Partners**” means “*Kommanditisten*” (Limited Partners), as this term is defined in the Facility Agreement.

“**Loan**” means “*Kreditbetrag*” (Loan), as this term is defined in the Facility Agreement.

“**Majority Lenders**” means “*Kreditgebermehrheit*” (Majority Lenders), as this term is defined in the Facility Agreement.

“**Management Plan**” means “*Managementplan*” (Management Plan), as this term is defined in the Facility Agreement.

“**Material Adverse Effect**” means “*Wesentliche Nachteilige Veränderung*” (Material Adverse Effect), as this term is defined in the Facility Agreement.

“**Material Subsidiaries**” means, collectively or, where the context requires, individually:

- (a) the Borrower;
- (b) AMD Saxony Limited Liability Company & Co. KG;
- (c) FASL LLC; and

any other member of the Group, including its Subsidiaries, which meets any of the following requirements:

- (i) the Guarantor’s and its Subsidiaries’ investment in and advances to such other member of the Group exceed five (5) *per cent.* of the total assets of the Group consolidated as of the end of the most recently completed fiscal year;

- (ii) the Guarantor's and its Subsidiaries' proportionate share of the total assets (after intercompany eliminations) of such other member of the Group exceeds five (5) *per cent.* of the total assets of the Group consolidated as of the end of the most recently completed fiscal year; or
- (iii) the Guarantor's and its Subsidiaries' earnings from continuing operations before income taxes, extraordinary items and the cumulative effect of a change in accounting principles of such other member of the Group exceeds five (5) *per cent.* of such earnings of the Group consolidated for the most recently completed fiscal year.

“**Month**” means “*Monat*” (Month), as this term is defined in the Facility Agreement.

“**Obligor**” means “*Verpflichteter*” (Obligor), as this term is defined in the Facility Agreement.

“**Original Lenders**” means “*Ursprüngliche Kreditgeber*” (Original Lenders), as this term is defined in the Facility Agreement.

“**Other Surety**” means any person (other than the Guarantor, the Borrower or the Security Agent) who is a party to any Collateral Security.

“**Participation**” means “*Beteiligung*” (Participation), as this term is defined in the Facility Agreement.

“**Participation Agreement**” means “*Beteiligungsvereinbarung*” (Participation Agreement), as this term is defined in the Facility Agreement.

“**Partnership Agreement**” means “*Gesellschaftsvertrag*” (Partnership Agreement), as this term is defined in the Facility Agreement.

“**Partnership Interest Pledges**” means “*Verpfändung der Gesellschaftsanteile*” (Partnership Interest Pledges), as this term is defined in the Facility Agreement.

“**Permitted Business**” means “*Zulässiger Geschäftsbetrieb*” (Permitted Business), as this term is defined in the Facility Agreement.

“**Permitted Indebtedness**” means “*Zulässige Verbindlichkeiten*” (Permitted Indebtedness), as this term is defined in the Facility Agreement.

“**Permitted Security**” means “*Zulässige Sicherheiten*” (Permitted Security), as this term is defined in the Facility Agreement.

“**Project**” means “*Projekt*” (Project), as this term is defined in the Facility Agreement.

“**Project Documents**” means “*Projektdokumente*” (Project Documents), as this term is defined in the Facility Agreement.

“**Protected Party**” means “*Geschützte Partei*” (Protected Party), as this term is defined in the Facility Agreement.

“**Qualifying Lenders**” means “*Qualifizierte Kreditgeber*” (Qualifying Lenders), as this term is defined in the Facility Agreement.

---

“**Quarter Date**” means “*Quartalstag*” (Quarter Date), as this term is defined in the Facility Agreement.

“**Relevant GAAP**” means:

- (a) in respect of the Borrower, German GAAP;
- (b) in respect of the Guarantor, US GAAP; and

in respect of any other member of the Group (either alone or including its Subsidiaries on a consolidated basis) the generally accepted accounting principles and practices of its jurisdiction of incorporation, formation or establishment.

“**Relevant Subsidiaries**” means, collectively or, where the context requires, individually, the General Partner, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH and the Borrower.

“**Repeating Representations**” means each of the representations set out in Clause 10.2 (*Status*) to Clause 10.8 (*Governing Law and Enforcement*) (inclusive), Clause 10.11 (*No Default*) to Clause 10.23 (*No Security*) (inclusive) and Clause 10.27 (*Management Plans*) to Clause 10.32 (*Security from the Borrower*) (inclusive).

“**Reporting Agent**” means “*Berichtsagentin*” (Reporting Agent), as this term is defined in the Facility Agreement.

“**Revolving Credit Agreement**” means “*Gesellschafter-Bankkreditvertrag*” (Revolving Credit Agreement), as this term is defined in the Facility Agreement.

“**SEC**” means the United States Securities and Exchange Commission.

“**Second General Partner**” means “*Zweiter Komplementär*” (Second General Partner), as this term is defined in the Facility Agreement.

“**Security**” means “*Sicherheiten*” (Security), as this term is defined in the Facility Agreement.

“**Security Document**” means “*Sicherheitendokument*” (Security Document), as this term is defined in the Facility Agreement.

“**Signing Date**” means “*Tag der Unterzeichnung*” (Signing Date), as this term is defined in the Facility Agreement.

“**Site**” means “*Betriebsgrundstück*” (Site), as this term is defined in the Facility Agreement.

“**Subordinated Loan**” means “*Nachrangige Darlehen*” (Subordinated Loan), as this term is defined in the Facility Agreement.

“**Subordinated Loan Agreement**” means “*Gesellschafter-Tilgungskreditvertrag*” (Subordinated Loan Agreement), as this term is defined in the Facility Agreement.

“**Subordination Agreement**” means “*Nachrang- und Kapitalbelassungsvereinbarung*” (Subordination Agreement), as this term is defined in the Facility Agreement.



“**Subsidiary**” means “*Tochtergesellschaft*” (Subsidiary), as this term is defined in the Facility Agreement.

“**Subsidy Agreement**” means “*Zuschußvertrag*” (Subsidy Agreement), as this term is defined in the Facility Agreement.

“**Tax**” means “*Steuern*” (Tax), as this term is defined in the Facility Agreement.

“**Tax Credit**” means “*Steuergutschrift*” (Tax Credit), as this term is defined in the Facility Agreement.

“**Tax Deduction**” means “*Steuerabzug*” (Tax Deduction), as this term is defined in the Facility Agreement.

“**Tax Payment**” means “*Steuerzahlung*” (Tax Payment), as this term is defined in the Facility Agreement.

“**Technical Completion**” means “*Technische Fertigstellung*” (Technical Completion), as this term is defined in the Facility Agreement.

“**Transaction Document**” means “*Transaktionsdokument*” (Transaction Document), as this term is defined in the Facility Agreement.

“**Treaties**” means “*Abkommen*” (Treaties), as this term is defined in the Facility Agreement.

“**US GAAP**” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), as applicable.

“**Utilization Request**” means “*Ziehungsnotiz*” (Utilization Request), as this term is defined in the Facility Agreement.

## 1.2 Interpretation

(a) Any reference in this Guarantee Agreement to:

- (i) the “**Security Agent**”, “**Facility Agent**”, the “**Borrower**” or the “**Guarantor**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) the “**Facility Agreement**” or any other agreement or instrument is a reference to the Facility Agreement or other agreement or instrument as amended, supplemented, restated, novated or otherwise modified from time to time;
- (iii) a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (iv) a provision of law is a reference to that provision as amended or re-enacted; and
- (v) unless a contrary indication appears, a time of day is a reference to Frankfurt am Main time.

- 
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) A capitalised term used in this Guarantee Agreement or in any notice given under or in connection with this Guarantee Agreement and not otherwise defined herein has the meaning ascribed to such term in the Facility Agreement.

**2. GUARANTEE**

- (a) The Guarantor hereby irrevocably and unconditionally guarantees the due and punctual payment in full to the Lenders (acting through the Security Agent), without set-off or deduction, of the Guaranteed Liabilities in accordance with, and in the currency or respective currencies in which the same are payable under, the terms of the relevant Finance Documents. Payment shall be made within three (3) Business Days of demand to such account in Germany as the Security Agent shall specify in writing.
- (b) The Guarantor hereby irrevocably and unconditionally undertakes to indemnify, within three (3) Business Days of demand by the Borrower or the Security Agent, the Borrower and any other party to this Guarantee Agreement against any cost, loss or liability incurred by that party as a result of any repayment claim brought by the Federal Republic of Germany or the Free State of Saxony (*Freistaat Sachsen*) in connection with any public allowances or grants (*Investitionszuschüsse/Investitionszulagen*) provided to the Borrower pursuant to a Subsidy Agreement.

**3. PAYMENT ON FIRST DEMAND**

The Guarantor undertakes to effect payment hereunder promptly upon receipt of the Security Agent's first written demand and its confirmation in writing that the amount claimed corresponds to the Guarantor's Liabilities.

**4. PRIMARY OBLIGATION**

The Guarantee constitutes the Guarantor's primary obligation (*Garantie*) (and not a surety guarantee obligation (*Bürgschaft*)) to make payment to the Security Agent in accordance with the terms of this Guarantee Agreement, under any and all circumstances, regardless of the validity, legality or enforceability of the Facility Agreement or any other Finance Document. Demands may be made under this Guarantee Agreement from time to time and may be enforced irrespective of whether any steps or proceedings are or will be taken against the Borrower or any Other Surety to recover amounts claimed under this Guarantee Agreement.

**5. CONTINUING SECURITY**

This Guarantee Agreement shall be a continuing security until all of the Guarantor's Liabilities have been paid, discharged or performed in full and shall not be satisfied by any intermediate discharge or payment of or on account of the Guarantor's Liabilities or any of them or any settlement of accounts between the Finance Parties and the Borrower or any Other Surety or the Federal Republic of Germany, the Free State of Saxony (*Freistaat Sachsen*), the Agents and the Borrower.

---

**6. UNCONDITIONAL GUARANTEE**

**6.1 Absolute Payment Obligation**

The Guarantor's liability hereunder shall be absolute and unconditional in all circumstances and shall not be discharged, impaired or otherwise affected by any defences, exceptions, rights of withholding or counterclaims which may be available to the Borrower, including without limitation, any one or more of the following (whether occurring with or without the consent of, or notice to, any person):

- (a) the Facility Agreement or any Collateral Security being or becoming wholly or partially illegal, void, voidable, subject to a right of rescission (*Anfechtung*) or unenforceable for any reason whatsoever;
- (b) any absence or insufficiency of corporate resolutions relating to the Facility Agreement;
- (c) any inadequate representation of the Borrower;
- (d) any absence of licences or other authorisations or any factual or legal restrictions or limitations existing or introduced in the country of incorporation, establishment or formation of the Borrower;
- (e) the Security Agent holding, taking, renewing or extending any Collateral Security at any time;
- (f) any variation, amendment, modification, replacement, termination, waiver, release, discharge, exchange, assignment or transfer of, or other dealing with, the Facility Agreement, this Guarantee Agreement or any Collateral Security (however fundamental and including, without limitation, any increase in any amount due or owing thereunder or in the rate of interest or any other sum payable thereunder or any prejudice to or loss of any rights of subrogation);
- (g) any time, credit or other indulgence being granted to, or any release of or composition or other arrangement with, the Borrower or any Other Surety;
- (h) any inability, omission or neglect (intentional or otherwise) on the part of the Security Agent to take or perfect, or on the part of the Borrower or any other person to give, any Collateral Security agreed or intended to be taken or given or any such inability, omission or neglect on the part of the Security Agent to enforce the Agreement or any Collateral Security;
- (i) any right of set-off (*Aufrechnung*), right of withholding or retention (*Zurückbehaltungsrecht*) or similar rights of the Borrower or any third party on behalf of the Borrower;
- (j) any acquiescence, negligence or mistake on the part of an Agent;
- (k) the Lenders or any Agent being able to raise any right of combination of accounts, set-off or similar rights in view of any Guarantor's Liabilities; and
- (l) any other act, fact, event or omission which but for this provision might operate to discharge, impair or otherwise affect the Guarantor's liability hereunder.

6.2 **Unrestricted Right of Enforcement**

The Guarantor's obligations hereunder are in addition to and not in substitution for any Collateral Security which the Security Agent may now or hereafter hold. This Guarantee Agreement may be enforced without the Security Agent first having recourse to any such Collateral Security and without having to take any steps or proceedings or exhaust any rights against the Borrower or any Other Surety, or may be enforced for any balance due to the Security Agent after having resorted to any one or more such means of obtaining payment and discharge of all or any part of the Guarantor's Liabilities.

7. **TAXES**

7.1 **Indemnity**

(a) The Guarantor shall (within three (3) Business Days of demand by the Security Agent) pay to the Protected Party an amount equal to the loss, liability or cost that that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of withholding Tax, stamp duty, registration and other similar Taxes by that Protected Party in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Lender:

(A) under the law of the jurisdiction in which that Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Lender is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which that Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if in either case that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under Clause 7.2 (*Gross-up*); or

(B) would have been compensated for by an increased payment under Clause 7.2 (*Gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 7.2 (*Gross-up*) applied.

(c) A Protected Party making, or intending to make, a claim pursuant to paragraph (a) above shall promptly notify the Security Agent of the event which will give, or has given, rise to the claim, following which the Security Agent shall notify the Guarantor.

(d) A Protected Party shall, on receiving a payment from the Guarantor under this Clause 7.1, notify the Security Agent.

7.2 **Gross-Up**

(a) The Guarantor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

- 
- (b) The Guarantor shall promptly upon becoming aware that the Guarantor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Security Agent accordingly. Similarly, a Lender shall notify the Security Agent on becoming so aware in respect of a payment payable to that Lender. If the Security Agent receives such notification from a Lender it shall notify the Guarantor.
- (c) If a Tax Deduction is required by law to be made by the Guarantor in respect of a payment to a Lender, the amount of the payment due from the Guarantor to that Lender shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) The Guarantor is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of any payment which is capable of attracting a Tax Deduction, if on the date on which the payment falls due:
- (i) the payment relates to a Tax referred to in paragraph (b) of Clause 7.1 (*Indemnity*);
  - (ii) the payment could have been made to the relevant Lender without the Tax Deduction if it was a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under the Facility Agreement in (or in the interpretation, administration or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or
  - (iii) the Guarantor is able to demonstrate that the payment could have been made to that Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below, including timely providing the documents allowing the Guarantor to make the payment without a Tax Deduction.
- (e) If the Guarantor is required to make a Tax Deduction, the Guarantor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Guarantor shall deliver to the Security Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.
- (g) A Lender and the Guarantor shall co-operate in completing any procedural formalities necessary for the Guarantor to obtain authorisation to make a payment to that Lender without a Tax Deduction, and such Lender shall provide to the applicable party or parties on a timely basis the necessary documents allowing the Guarantor to make the payment without a Tax Deduction.
- (h) Any difference in the amount which is owed by the Guarantor under paragraph (c) above will not be covered by the Federal/State Guarantee. Any such amount which is paid by the Guarantor and not recovered by it under Clause 7.3 (*Tax Credit*) is deemed to reduce the principal amount owed by the Guarantor in relation to the Federal/State Guarantor.

7.3 **Tax Credit**

- (a) If the Guarantor makes a Tax Payment and the relevant Lender determines that:
- (i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
  - (ii) that Lender has obtained, utilised and retained that Tax Credit, or could have obtained, utilised or retained that Tax Credit had it claimed such benefit according to the applicable procedural rules within the provisions of paragraph (c) below,
- the Lender shall pay an amount to the Guarantor which that Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Guarantor. Upon the request of the Guarantor, the relevant Lender will use its reasonable endeavours (to the extent commercially practicable and legally permitted) to recover such Tax Credit.
- (b) If such a Tax Credit by reference to which a Lender has made a payment to the Guarantor under paragraph (a) above is subsequently disallowed or cancelled, the Guarantor must reimburse any payment made under paragraph (a) above to the relevant Lender.
- (c) If the Guarantor makes a Tax Payment, the relevant Lender shall take reasonable steps to claim a Tax Credit unless in the opinion of that Lender the making of such claim might have an adverse effect on its business, operations, property, condition or prospects (financial or otherwise). The Guarantor shall bear any costs incurred by a Lender in making such a claim.

7.4 **Original Lenders' Confirmation**

- (a) Each Original Lender confirms to the Guarantor, the Security Agent and the Facility Agent on the date of this Guarantee Agreement that it is a Qualifying Lender.
- (b) A Lender shall promptly give notice to the Guarantor (through the Security Agent) if it becomes aware of any change in the position from that set out in paragraph (a) above.

8. **CURRENCY INDEMNITY**

If any amount is received by the Security Agent in a currency other than that in which the relevant obligation or liability of the Guarantor was payable (the “**Required Currency**”) (whether pursuant to a judgment, in the Insolvency of the Guarantor or otherwise), such obligation or liability shall be discharged only to the extent that an Agent is able, upon receipt of such amount, to purchase the Required Currency with such other currency in accordance with the usual banking procedures of the Security Agent. If the amount in the Required Currency which may be so purchased is, after deducting any costs of exchange and any other related costs, less than the amount of the relevant obligation or liability, the Guarantor shall, as a separate and independent obligation and notwithstanding any time or other indulgence granted to the Guarantor or any other act, matter or thing, forthwith pay to the Security Agent the amount of the shortfall.

9. **CLAIMS BY GUARANTOR**

9.1 **Limitation on Exercise of Rights**

So long as any Guarantor's Liability remains outstanding or capable of arising the Guarantor waives all rights of subrogation and indemnity against the Borrower and any Other Surety and agrees that it shall not exercise any rights which it may have by reason of performance by it of its obligations hereunder and under the other Finance Documents and it shall not, except as may be directed by the Security Agent:

- (a) make or enforce any claim or right against the Borrower or any Other Surety whether

in respect of any payment hereunder or otherwise and whether by way of defence, set-off, counterclaim, subrogation, contribution, indemnity or otherwise, except as specifically permitted under the Subordination Agreement;

- (b) claim the benefit of any set-off, counterclaim, proof, dividend, composition or payment to which an Agent may now or hereafter be entitled from or against the Borrower or any Other Surety, except as specifically permitted under the Subordination Agreement;
- (c) claim the benefit of or participate in any Collateral Security now or hereafter held by the Security Agent or any share therein;
- (d) prove or claim in competition to the Security Agent in the Insolvency of the Borrower or any Other Surety so as to diminish any distribution, dividend or payment which, but for such proof or claim, the Security Agent would be entitled to receive and the Guarantor shall not claim or receive the benefit of any distribution, dividend or payment arising out of or relating thereto;
- (e) call on an Agent to sue or take proceedings against the Borrower or any Other Surety or raise a defence, set-off or counterclaim of the Guarantor, the Borrower or any Other Surety in reduction of the Guarantor's liability hereunder;
- (f) otherwise have or exercise any rights of subrogation or as surety in competition with an Agent.

## 9.2 **Payments under the Project Documents**

Subject to the terms of the Subordination Agreement, nothing contained in this Guarantee Agreement shall prevent the Guarantor from receiving any payments due to it pursuant to the Project Documents.

## 10. **REPRESENTATIONS AND WARRANTIES**

### 10.1 **Representations and Warranties**

- (a) The Guarantor makes the representations and warranties set out in Clause 10.11 (*No Default*), Clause 10.13 (*Good Title to Assets*), Clause 10.14 (*Intellectual Property Rights*), Clause 10.21 (*Taxation*) to Clause 10.23 (*No Security or Guarantees*) (inclusive), paragraphs (b) to (d) (inclusive) of Clause 24 (*Information Memorandum*) to Clause 10.28 (*Change in Business*) (inclusive), Clause 10.30 (*Material Disclosures*) and Clause 10.32 (*Security from the Borrower*) below on behalf of itself, and makes all other representations and warranties set out in this Clause 10, except where noted otherwise, on behalf of itself and each of its Subsidiaries.
- (b) The Finance Parties have entered into the Facility Agreement in reliance on these representations and warranties.

### 10.2 **Status**

- (a) The Guarantor and each Relevant Subsidiary is a corporation, limited liability company or a limited partnership (*KG*), duly incorporated, established or formed and validly existing under the law of the jurisdiction of its place of incorporation, establishment or formation.

- (b) The Guarantor and each Relevant Subsidiary has the power to own its assets and carry on its business as it is currently being conducted.
- (c) As of the Signing Date, one hundred (100) *per cent.* of the capital partnership interests (*Kapitalanteile*) in the Borrower are held by the Limited Partners.
- (d) The Limited Partners who are members of the Group have an aggregate minimum holding of at least fifty-one (51) *per cent.* of the capital in the Borrower and neither Limited Partner that is a member of the Group holds partner or equity interests in any other person (except that AMD Fab 36 Admin GmbH is a wholly-owned subsidiary of AMD Fab 36 Holding GmbH).
- (e) AMD Fab 36 Holding GmbH and the General Partner are wholly-owned subsidiaries of the Guarantor.

10.3 **No Winding-Up**

Save as otherwise disclosed in writing to the Facility Agent, no administrator, receiver, insolvency trustee, bankruptcy examiner, liquidator or similar officer or official has been appointed with respect to the Guarantor, any Material Subsidiary or any Relevant Subsidiary or any of their assets and (to the best of its knowledge and belief) no petition by a third party or proceeding for any such appointment is pending nor has any resolution for any such appointment been passed.

10.4 **Binding Obligations**

The obligations expressed to be assumed by the Guarantor and each Relevant Subsidiary in each Transaction Document to which it is a party are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) of the Facility Agreement and the conditions precedent set forth in the Finance Documents, legal, valid, binding and enforceable obligations.

10.5 **Non-Conflict with Other Obligations**

The entry into and performance by the Guarantor and any other member of the Group that is a party to a Transaction Documents of, and the transactions contemplated by, the Transaction Documents to which the Guarantor and/or such other member of the Group is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents;
- (c) any material agreement or instrument binding upon it or any material part of its assets,

nor (except as provided in any Security Documents to which the Guarantor and/or such other member of the Group is a party) result in the creation of, or oblige the Guarantor or such other member of the Group or any of its Subsidiaries to create, any Security (other than Permitted Security) over any material part of its or any of its Subsidiaries' assets.

10.6 **Power and Authority**

Each of the Guarantor and any other member of the Group that is a party to a Transaction Document has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.



10.7 **Validity and Admissibility in Evidence**

All Authorisations (not including the EU Notification Approval) required by each of the Guarantor and any other member of the Group that is a party to a Transaction Document:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation, establishment or formation; and
- (c) to enable it to create any Security expressed to be created by it by or pursuant to, or as the case may be, any Security expressed to have been created by it and to be evidenced in, any Security Document to which it is a party and to ensure that such Security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect, save for (i) any filings, registrations or notarisations required in relation to the Security Documents to which it is a party, which filings, registrations or notarisations will be made promptly after execution of the relevant documents and in any event within applicable time limits, or (ii) such filings, registrations or notarisations which have been obtained and effected.

10.8 **Governing Law and Enforcement**

- (a) The choice of German law as the governing law of the Finance Documents to which each of the Guarantor and any other member of the Group is a party (or, in respect of any Security Document to which it is a party, the choice of the relevant governing law of that Security Document) will be recognised and enforced in its jurisdiction of incorporation, establishment or formation, subject to the requirements for or exceptions to the recognition and enforcement of provisions governed by foreign laws generally applicable in such jurisdiction.
- (b) Any judgment obtained in Germany in relation to the Finance Document to which each of the Guarantor and any other member of the Group is a party (or, in respect of any Security Document to which it is a party, any judgment obtained in the courts which are expressed to have jurisdiction to hear disputes under that Security Document) will be recognised and enforced in its jurisdiction of incorporation, establishment or formation, subject to the requirements for or exceptions to the enforcement of foreign judgments generally applicable in such jurisdiction.

10.9 **Deduction of Tax**

To the extent that a payment by the Guarantor or any other member of the Group under a Finance Document to which it is a party is made to a Qualifying Lender and such Qualifying Lender has provided all the documentation required under applicable laws and regulations, neither the Guarantor nor such other member of the Group is required under the law of its jurisdiction of incorporation, establishment or formation to make any deduction for or on account of Tax from any such payment.

10.10 **No Filing or Stamp Taxes**

Under the law of the jurisdiction of incorporation, establishment or formation of the Guarantor and any other member of the Group that is a party to a Finance Document, it is not necessary that the Finance Documents to which it is a party be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated therein.

10.11 **No Default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes any material default under any other agreement or instrument which is binding on the Guarantor or to which its assets are subject which would amount to an aggregate liability of over twenty million (20,000,000) Euro arising under such agreement or instrument from such default (save to the extent that any liabilities are being contested in good faith).

10.12 **Information**

- (a) Any written information (excluding that referred to in Clause 10.24 (*Information Memorandum*)) and any financial information (including in relation to the Credit Ratings) provided by the Guarantor and/or any German Subsidiary to any Finance Party in connection with the Transaction Documents was true, accurate and complete in all material respects as at the date it was provided and was not misleading in any material respect.
- (b) To the extent that the information referred to in paragraph (a) above contained any opinions, forecasts, projections and/or conclusions, such opinions, forecasts, projections and/or conclusions were fair, based on reasonable assumptions and were made in good faith; **provided however**, that the Guarantor and the German Subsidiaries make no representation or warranty in relation to any information provided by a third party and denoted as such.

10.13 **Good Title to Assets**

The Borrower has, subject to Permitted Security, good and marketable title to or valid leases or licences of or is otherwise entitled to use all material assets (including the Equipment acquired as at the date of this representation, but not including Intellectual Property which is subject to the provisions of Clause 17.14 (*Intellectual Property Rights*) of the Facility Agreement) necessary to carry on its business as it is being conducted.

10.14 **Intellectual Property Rights**

- (a) To the best of its knowledge and belief, the Guarantor has legal rights to use all the Intellectual Property which is material to its business and, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, to the best of its knowledge and belief, the Guarantor does not, in carrying on its business, infringe any Intellectual Property Rights of any third party in any material respect.
- (b) To the best of its knowledge and belief, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, the Guarantor has registered and has taken all requisite actions (including payment of

fees) required to maintain in full force and effect any registered Intellectual Property Rights owned by the Guarantor which are material in the context of its business or which are required to be registered under applicable law.

**10.15 Creation of Security**

- (a) Each of the Guarantor and any other member of the Group that is a party to a Security Document is, or at the time of execution (and the fulfilment of any conditions included therein) of the Security Documents to which it is a party will be, subject to any Permitted Security, the absolute owner (*Eigentümer*) of all the material assets over which it purports to create Security by or pursuant to or as evidenced in the Security Documents to which it is a party.
- (b) Each Security Document to which each of the Guarantor and any other member of the Group that is a party to a Security Document is or is to be a party creates, or upon such execution (and the fulfilment of any conditions included therein) will create, the Security which that Security Document purports to create or, if that Security Document purports to evidence Security, accurately evidences, or upon such execution (and the fulfilment of any conditions included therein) will so evidence, Security which has been validly created.
- (c) The partner or equity interests (*Gesellschaftsanteile*) of each of the Guarantor and any other member of the Group that is a party to a Security Document which are or are to be subject to any Security created by or pursuant to, or evidenced in, any of the Security Documents to which it is or is to be a party have been or will be duly authorised and validly issued and are or will be fully paid in, as specified in the “Milestones” set out in the Partnership Agreement, and non-assessable.

**10.16 Insurance**

- (a) Each of the Guarantor and the Relevant Subsidiaries maintains or is the beneficiary of insurance on and in relation to its business and assets (and in particular, the Borrower maintains the Required Insurance on and in relation to the Site) with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by it in its jurisdiction of incorporation, establishment or formation.
- (b) There has been no omission to disclose a fact which must be disclosed by applicable law or pursuant to contract, which might in either case entitle an insurer to avoid or otherwise reduce its liability under any policy relating to insurance as referred to in paragraph (a) above.

**10.17 Pari Passu Ranking**

The payment obligations under the Finance Documents to which each of the Guarantor and any other member of the Group is a party rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to creditors or certain types of creditors generally.

**10.18 No Proceedings Pending or Threatened**

Except as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, no material litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency in relation to an Obligor, the Project or any Transaction Document to which such Obligor is a party which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or (to the best of that Obligor’s knowledge and belief) threatened against it.

10.19 **Environmental Compliance**

- (a) Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, it has obtained all requisite Environmental Licences as then required in relation to its business, where failure to do so would or might reasonably be expected to have a Material Adverse Effect, and has at all times, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, complied in all material respects with:
- (i) all applicable Environmental Laws as then required in relation to its business;
  - (ii) the terms and conditions of such Environmental Licences; and
  - (iii) all other covenants, conditions, restrictions and agreements binding on it directly or indirectly concerned with any Environmental Contamination, in each case where failure to do so would or might reasonably be expected to have a Material Adverse Effect.
- (b) Save otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, there are to its knowledge no events or circumstances that have occurred which may prevent or interfere with the compliance in any material respect in the future of it with all applicable Environmental Laws required in relation to its business, the terms of all Environmental Licences referred to in paragraph (a) above and all covenants, conditions, restrictions and agreements referred to in such paragraph and which would or might reasonably be expected to have a Material Adverse Effect.

10.20 **Environmental Claims**

Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through the Guarantor giving notice of its SEC filings, no Environmental Claim in relation to its business has been started or (to the best of its knowledge and belief) threatened against it which may reasonably be expected to have a Material Adverse Effect.

10.21 **Taxation**

- (a) The Borrower has duly and punctually paid and discharged all Taxes imposed upon it or its assets and due within the time period allowed without incurring penalties; save to the extent that:
- (i) payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes; and
  - (iii) payment can be lawfully withheld.

- (b) The Guarantor has duly and punctually paid and discharged all German Taxes imposed upon it or its assets and due within the time period allowed without incurring penalties; save to the extent that:
  - (i) payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes; and
  - (iii) payment can be lawfully withheld.
- (c) Neither Obligor is materially overdue in the filing of any Tax returns in Germany or the United States.
- (d) No claims are being asserted against either Obligor, nor is either Obligor aware of any claims that are reasonably likely to be asserted against it, with respect to any Taxes which might have a Material Adverse Effect.

10.22 **No Indebtedness**

Save for any Permitted Indebtedness, the Borrower has:

- (a) no Financial Indebtedness; and
- (b) no other indebtedness, except for any which has been incurred in the ordinary course of its business.

10.23 **No Security or Guarantees**

Save for any Permitted Security:

- (a) no Security exists over all or any of the Borrower's assets; and
- (b) no arrangement or transaction as described in paragraph (b) of Clause 20.3 (*Negative Pledge*) of the Facility Agreement has been entered into by the Borrower and is outstanding.

10.24 **Information Memorandum**

- (a) The information provided by the Guarantor or any German Subsidiary in relation to any member of the Group in the Information Memorandum was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and, as supplemented by the Guarantor's SEC filings, was not misleading or incomplete in any material respect.
- (b) Save as otherwise disclosed in writing to the Facility Agent:
  - (i) nothing has occurred or been omitted from the Information Memorandum; and
  - (ii) no information has been given or withheld by the Guarantor or on its behalf,since the date of the Information Memorandum that results in the information contained therein about any member of the Group being untrue or misleading in any material respect.
- (c) All opinions, forecasts, projections and conclusions contained in the Information Memorandum in relation to any member of the Group were fair, based on reasonable assumptions and were made in good faith.

- (d) Notwithstanding anything to the contrary contained in this Clause 10.24:
- (i) the Guarantor makes no representation or warranty in relation to:
  - (A) any information provided by a third party and denoted as such; and
  - (B) such information contained in the “Key Lending Considerations” section of the Information Memorandum; and
- (ii) in relation to the “Risks and Mitigants” section of the Information Memorandum, the Guarantor only makes representations and warranties in relation to factual information set out therein.

10.25 **Base Financial Statements**

- (a) The Base Financial Statements:
  - (i) were prepared in accordance with the Relevant GAAP consistently applied; and
  - (ii) (in the case of quarterly unaudited financial statements) fairly represent its financial condition and operations as at the date to which they were prepared and during the relevant financial period for which they were prepared, subject to normal year end adjustments, and take account of all material liabilities (contingent or otherwise), and all anticipated losses, as at the date to which they were prepared, unless expressly disclosed to the Facility Agent in writing to the contrary before the date of this Guarantee Agreement.
- (b) There has been no Material Adverse Effect since the date on which its latest Base Financial Statements were prepared.

10.26 **Business Plan**

- (a) The Business Plan has been prepared using accounting policies, practices and procedures consistent, in all material respects, with German GAAP as at the date of the Business Plan.
- (b) The information in the Business Plan was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect.
- (c) The Guarantor does not regard as unreasonable, or to any material extent, unattainable, any of the opinions, forecasts, projections or conclusions set out in the Business Plan as at the date thereof.
- (d) Save as otherwise disclosed in writing to the Facility Agent:
  - (i) nothing has occurred or been omitted from the Business Plan; and
  - (ii) no information has been given or withheld by the Guarantor or on its behalf,since the date of the Business Plan that results in the information contained therein being untrue or misleading in any material respect; **provided however**, the Guarantor makes no representation or warranty in relation to any information provided by a third party and denoted as such.
- (e) All the opinions, forecasts, projections and conclusions contained in the Business Plan were fair, based on reasonable assumptions and were made in good faith.

- (f) To the best of its knowledge and belief, the Guarantor has made full disclosure of all material facts of which it was aware at the time relating to the Project to all persons responsible for the preparing of the Business Plan.

10.27 **Management Plans**

- (a) The information in the most recent Management Plan was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect.
- (b) The Guarantor regards (as at the date that the most recent Management Plan is delivered to the Facility Agent) as neither unreasonable, nor to any material extent unattainable, any of the opinions, forecasts, projections or conclusions set out in that Management Plan.
- (c) Save as otherwise disclosed in writing to the Facility Agent:
- (i) nothing has occurred or been omitted from the most recent Management Plan; and
  - (ii) no information has been given or withheld by the Guarantor or on its behalf,
- since the date that the most recent Management Plan was delivered to the Facility Agent that results in the information contained therein being untrue or misleading in any material respect; **provided however**, it makes no representation or warranty in relation to any information provided by a third party and denoted as such.
- (d) As at the date that the most recent Management Plan was delivered to the Facility Agent, all the opinions, forecasts, projections and conclusions contained therein were fair, based on reasonable assumptions and were made in good faith.
- (e) To the best of its knowledge and belief, the Guarantor has made full disclosure of all material facts of which it was aware at the time relating to the Project to all persons responsible for the preparing of each Management Plan.

10.28 **Change in Business**

- (a) The Borrower has not made, or taken any steps to make, any substantial change to the Permitted Business.
- (b) The Guarantor has not made, or taken any steps to make, any substantial change to the Group Permitted Business.

10.29 **Material Adverse Effect**

Neither the Guarantor nor any of its Subsidiaries has entered into any agreement or obligation:

- (a) which could have a Material Adverse Effect; or
- (b) the performance of which in accordance with its terms would result in a breach of any provision of any Finance Document by either Obligor.

10.30 **Material Disclosures**

The Guarantor has disclosed in writing to the Facility Agent all material information in its possession relating to the Project, including all Project Documents and other material agreements.

10.31 **Compliance with Laws and Regulations**

The Guarantor and each Relevant Subsidiary have at all times complied in all material respects with any law or regulation applicable to it where failure to do so could reasonably be expected to result in a Material Adverse Effect.

10.32 **Security from the Borrower**

The Guarantor has not taken from the Borrower or any Other Surety any Security in respect of the Guarantor's liability hereunder or in respect of any other obligation or liability which the Borrower has or may at any time have to the Guarantor as a result of performance by the Guarantor of its obligations under this Guarantee Agreement.

10.33 **Time for Making Representations and Warranties**

(a) The representations and warranties set out in this Clause 10 are made by the Guarantor on the Signing Date.

(b) The Repeating Representations are deemed to be made by the Guarantor by reference to the facts and circumstances then existing (except as otherwise provided therein) on the date of each Utilisation Request, on the first day of each Interest Period and, prior to the date of first Utilisation, on each Quarter Date.

**11. INFORMATION UNDERTAKINGS**

11.1 **Financial Statements**

During the term of this Guarantee Agreement, the Guarantor shall supply to the Facility Agent in sufficient numbers for all the Lenders and the Federal/State Guarantor:

(a) as soon as the same become available, but in any event within ninety (90) days after the end of each of its fiscal years:

(i) its audited consolidated financial statements for that financial year;

(ii) the audited unconsolidated financial statements of the General Partner for that financial year (excluding the year ending 31 December 2003); and

(iii) the audited unconsolidated financial statements of each Limited Partner that is a member of the Group for that financial year (excluding the year ending 31 December 2003),

each comprising of its balance sheet, profit and loss account and cash flow statement, (and in the case of the Guarantor, together with a description of the business, market and financial developments of the Guarantor as required to be delivered by the Guarantor in its periodic SEC filings);

(b) as soon as the same become available, but in any event within sixty (60) days (or, if in respect of the last fiscal quarter of a financial year, within ninety (90) days) after



the end of each fiscal quarter in each of its financial years, its unaudited consolidated financial statements for that fiscal quarter, comprising of its balance sheet, profit and loss account and cash flow statement; and

- (c) as soon as the same become available, but in any event within thirty (30) days after the end of each Month, and for the first time in relation to the Month ending immediately prior to the date of Technical Completion and to be provided on such date, reports on the Credit Rating and the Group Consolidated Cash of the Guarantor (calculated in accordance with US GAAP) substantially in the form set out in Schedule 3 (*Form of Monthly Consolidated Cash Reports*).

#### 11.2 **Compliance Certificate**

- (a) The Guarantor shall supply to the Facility Agent, with each set of financial statements delivered pursuant to paragraphs (a) and (b) of Clause 11.1 (*Financial Statements*), a Compliance Certificate setting out (in reasonable detail), in each case as at the date to which those financial statements were drawn up, computations as to compliance with Clause 12 (*Financial Covenants*) if compliance with such financial covenants is required pursuant to the terms of this Guarantee Agreement.
- (b) The Guarantor shall ensure that each Compliance Certificate shall be signed by:
  - (i) the chief financial officer, director of treasury or treasurer of the Guarantor, in the case of financial statements of the Guarantor;
  - (ii) a senior duly authorised officer, in the case of financial statements of the General Partner; or
  - (iii) a senior duly authorised officer, in the case of financial statements of such Limited Partner that is a member of the Group,as the case may be, and, if required to be delivered with the audited financial statements delivered pursuant to paragraph (a) of Clause 11.1 (*Financial Statements*), confirmed by the Auditors.

#### 11.3 **Requirements as to Financial Statements**

- (a) Each set of financial statements and statements delivered by the Guarantor pursuant to paragraph (a) of Clause 11.1 (*Financial Statements*) shall be audited and accompanied by an audit report without material qualification by the Auditors.
- (b) Each set of financial statements delivered by the Guarantor pursuant to paragraphs (a) and (b) of Clause 11.1 (*Financial Statements*) shall be certified by:
  - (i) the chief financial officer, director of treasury or treasurer of the Guarantor, in the case of financial statements of the Guarantor;
  - (ii) a senior duly authorised officer, in the case of financial statements of the General Partner; or
  - (iii) a senior duly authorised officer, in the case of financial statements of such Limited Partner that is a member of the Group,as the case may be, as fairly representing its financial condition as at the date as at which those financial statements were drawn up (in the case of unaudited financial statements, subject to normal year end adjustments).

- (c) The Guarantor must notify the Facility Agent of any material change to the basis on which the audited or unaudited financial statements delivered by it pursuant to paragraph (a) or (b) above are prepared from those applied in the preparation of the relevant Base Financial Statements (including, without limitation, any change in US GAAP but excluding any change resulting only from the exercise by the Guarantor or the General Partner, as the case may be, of a right to choose an alternative treatment under US GAAP).
- (d) If the Guarantor notifies the Facility Agent of a change in accordance with paragraph (c) above, then the Guarantor and the Facility Agent shall enter into negotiations in good faith for a period of not more than thirty (30) days with a view to agreeing:
  - (i) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Guarantee Agreement; and
  - (ii) if so, any amendments to this Guarantee Agreement (including appropriate changes to the financial covenants set out in Clause 12.2 (*Adjusted Tangible Net Worth*) and Clause 12.3 (*EBITDA*)) and applicable definitions which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms, and if any amendments are agreed they shall take effect and be binding on each of the parties hereto in accordance with their terms.

11.4 **Information: Miscellaneous**

The Guarantor shall supply (or shall cause the Borrower to supply, in which case the obligations of the Guarantor under this Clause 11.4 shall be deemed to have been satisfied) to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests) and, in the case of paragraph (e) below, to the Federal/State Guarantors, each case in relation to the Guarantor:

- (a) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Guarantor and which might, if adversely determined, reasonably be expected to involve potential or alleged liability in excess of fifty million (50,000,000) Euro (or its equivalent in other currencies on the date of their determination);
- (b) promptly upon becoming aware of them, the details of any insurance claims, claims made under the Project Documents or material changes to the Project which might reasonably be expected to involve potential or alleged liability of the Borrower in excess of five million (5,000,000) Euro (or its equivalent in other currencies on the date of their being determined or made);
- (c) promptly upon becoming aware of them, any conflicts or breaches of any law or regulation applicable to it which would or might reasonably be expected to have a Material Adverse Effect;
- (d) promptly upon becoming aware of them, the details of any collective labour dispute which is current, threatened or pending against the Guarantor which would or might reasonably be expected to have a Material Adverse Effect;
- (e) promptly upon becoming aware of them, (i) the details of any change in the Credit Rating or in the rating of the Facility (if any) or in the published outlook of either and

(ii) any relevant information (if possible, together with any relevant documents in connection therewith) with a likely or expected outcome leading to a downgrade of the Guarantor's Credit Rating;

- (f) promptly upon filing them, notice of any SEC filings;
- (g) promptly, details of any changes to the Borrower's, the Guarantor's and/or the General Partner's accounting periods and all changes of the Borrower's or any Relevant Subsidiary's articles of association or equivalent constitutional documents;
- (h) promptly, such further information regarding the financial condition, business and operations of the Borrower, the Guarantor and/or the General Partner as any Finance Party (through the Facility Agent) may reasonably request;
- (i) promptly, the details of any amendments, variations, novations, supplements or terminations of any Transaction Document to which a Finance Party is not a party; and
- (j) as soon as the same become available, but in any event within sixty (60) days (or, if in respect of the last fiscal quarter of a financial year, within ninety (90) days) after the end of each fiscal quarter in each of its financial years, a report on the number of microprocessors sold by the Guarantor,

and shall ensure that senior management is available once a year for the purpose of a meeting with the Lenders and the Facility Agent in relation thereto.

#### 11.5 **Notification of Default**

- (a) The Guarantor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon a senior executive officer of the Guarantor becoming aware of its occurrence.
- (b) Promptly upon a request by the Facility Agent, the Guarantor shall supply to the Facility Agent a certificate signed by two senior officers on its behalf certifying that to the best of its knowledge and belief no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### 12. **FINANCIAL COVENANTS**

The covenants in this Clause 12 will remain in force from the date of this Guarantee Agreement until all of the Guarantor's Liabilities have been paid, discharged or performed in full and as long as any Commitment is in force.

##### 12.1 **Financial Definitions**

In this Clause 12:

“**Adjusted Net Earnings from Operations**” means, with respect to any fiscal period of the Guarantor, the Guarantor's net income after provision for income taxes for such fiscal period, as determined on a consolidated basis in accordance with US GAAP and reported on the financial statements of the Guarantor (as such financial statements are required to be delivered to the Facility Agent hereunder), but excluding any unaudited year end financial statements, for such period, excluding any and all of the following included in such net income:

- (a) gain arising from the sale of any capital assets;

- 
- (b) gain arising from any write-up in the book value of any asset;
  - (c) earnings of any person substantially all the assets of which have been acquired by the Guarantor or any Subsidiary of the Guarantor in any manner, to the extent realised by such person prior to the date of acquisition;
  - (d) earnings of any person in which the Guarantor or any Subsidiary of the Guarantor has an ownership interest unless (and only to the extent) such earnings have actually been received by the Guarantor or any such Subsidiary in the form of cash distributions;
  - (e) earnings of any person to which assets of the Guarantor or any Subsidiary of the Guarantor have been sold, transferred or disposed of, or into which the Guarantor or any Subsidiary of the Guarantor have been merged, or which has been a party with the Guarantor or a Subsidiary of the Guarantor to any consolidation or any other form of reorganisation, prior to the date of such transaction;
  - (f) gain arising from the acquisition of debt or equity securities of the Guarantor or any Subsidiary of the Guarantor or from cancellation or forgiveness of any debt of the Guarantor or any Subsidiary of the Guarantor (excluding any debt which is limited in recourse to property of the Guarantor or a Subsidiary of the Guarantor to the extent the amount of such debt exceeds the book value of such property as would be shown on a consolidated balance sheet of the Guarantor prepared in accordance with US GAAP);
  - (g) gain arising from extraordinary items, as determined in accordance with US GAAP, or from any other non-recurring transaction;
  - (h) interest income; and
  - (i) non-cash restructuring charges.

“**Adjusted Tangible Assets**” means all of the Guarantor’s assets, determined on a consolidated basis in accordance with US GAAP, except:

- (a) deferred assets, other than prepaid insurance and prepaid taxes;
- (b) patents, copyrights, trademarks, trade names, franchises, goodwill and other similar intangibles;
- (c) unamortised debt discount and expense;
- (d) assets of the Guarantor or any Subsidiary of the Guarantor constituting Intercompany Accounts; and
- (e) fixed assets to the extent of any write-up in the book value thereof resulting from a revaluation effective after the Signing Date.

“**Adjusted Tangible Net Worth**” means, at any relevant time, (a) the book value (after deducting related depreciation, obsolescence, amortisation, valuation and other proper reserves as determined in accordance with US GAAP) at which the Adjusted Tangible Assets would be shown on a balance sheet of the Guarantor at such time prepared on a consolidated basis in accordance with US GAAP less (b) the amount at which the Guarantor’s liabilities would be shown on such consolidated balance sheet, including as liabilities all reserves for contingencies and other potential liabilities which would be required to be shown on such balance sheet; provided that any and all contributions under the Participations shall not be treated as indebtedness at any time.

“**EBITDA**” means, on a consolidated basis for any period, Adjusted Net Earnings from Operations for such period plus, to the extent deducted in computing such Adjusted Net Earnings from Operations, the sum of:

- (a) income tax expense;
- (b) interest expense; and
- (c) depreciation and amortisation expense.

“**Intercompany Accounts**” means all assets and liabilities, howsoever arising, which are due to the Borrower from, which are due from the Borrower to, or which otherwise arise from any transaction by the Borrower with, the Guarantor or any Subsidiary of the Guarantor.

12.2 **Adjusted Tangible Net Worth**

From and after the first date, if any, on which Group Consolidated Cash is less than:

| <u>Amount</u>  | <u>if Moody's<br/>Rating is at<br/>least</u> | and | <u>if Standard &amp; Poor's<br/>Rating is at least</u> |
|----------------|--|-----|--|
| USD500,000,000 | B1 or lower                                  |     | B+ or lower  |
| USD425,000,000 | Ba3  |     | BB-  |
| USD400,000,000 | Ba2  |     | BB   |
| USD350,000,000 | Ba1  |     | BB+  |
| USD300,000,000 | Baa3 or better                               |     | BBB-or better  |

the Guarantor will maintain Adjusted Tangible Net Worth, determined as of the last day of each preceding fiscal quarter, of not less than the amounts set out below:

| <u>Measurement Date on<br/>fiscal quarter ending</u>             | <u>Amount</u>    |
|--|------------------|
| March 2004   | USD1,425,000,000 |
| June 2004  | USD1,425,000,000 |
| September 2004   | USD1,425,000,000 |
| December 2004  | USD1,425,000,000 |
| March 2005   | USD1,850,000,000 |
| June 2005  | USD1,850,000,000 |
| September 2005   | USD1,850,000,000 |
| December 2005  | USD1,850,000,000 |
| March 2006 and on the last day of each fiscal quarter thereafter | USD2,000,000,000 |

12.3 **EBITDA**

From and after the first date, if any, on which Group Consolidated Cash is less than:

| <u>Amount</u>  | <u>if Moody's<br/>Rating is at least</u> |     | <u>if Standard &amp; Poor's<br/>Rating is at least</u> |
|----------------|--|-----|--|
| USD500,000,000 | B1 or lower                              | and | B+ or lower  |
| USD425,000,000 | Ba3                                      | and | BB-  |
| USD400,000,000 | Ba2                                      | and | BB   |
| USD350,000,000 | Ba1                                      | and | BB+  |
| USD300,000,000 | Baa3 or better                           | and | BBB-or better  |

the Guarantor will maintain EBITDA as of the last day of each preceding fiscal period set forth below an amount not less than the amount set forth below opposite the date of such preceding fiscal period:

| <u>Period</u>  | <u>Amount</u>    |
|--|------------------|
| for the four fiscal quarters ending March 2004   | USD550,000,000   |
| for the four fiscal quarters ending June 2004  | USD750,000,000   |
| for the four fiscal quarters ending September 2004   | USD850,000,000   |
| for the four fiscal quarters ending December 2004  | USD950,000,000   |
| for the four fiscal quarters ending March 2005 and for the four fiscal quarters ending on each fiscal quarter thereafter | USD1,050,000,000 |

12.4 **Financial Testing**

The financial covenants set out in this Clause 12 shall be tested by reference to each of the financial statements and each Compliance Certificate delivered pursuant to Clause 11.1 (*Financial Statements*) and Clause 11.2 (*Compliance Certificate*).

13. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 13 remain in force from the date of this Guarantee Agreement until all of the Guarantor's Liabilities have been paid, discharged or performed in full and as long as any Commitment is in force.

13.1 **Authorisations**

(a) The Guarantor shall promptly:

- (i) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (ii) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Transaction Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Transaction Document to which it is a party.

(b) The Guarantor shall:

- (i) ensure that it has the right and is duly qualified to conduct its business as it is conducted from time to time in all applicable jurisdictions in which the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect on the Guarantor;
- (ii) obtain, comply with and do all that is necessary to maintain in full force and effect

any Authorisation which is necessary for the conduct of its business or the business of the Group as a whole where failure to do so could reasonably be expected to result in a Material Adverse Effect on the Guarantor; and

(iii) upon the Facility Agent's written request supply the Facility Agent with copies of any such Authorisations.

13.2 **Compliance with Laws**

The Guarantor shall comply in all material respects with any law or regulation applicable to it where failure to comply could reasonably be expected to result in a Material Adverse Effect on the Guarantor.

13.3 **Change of Business**

The Guarantor shall not make, or take any steps to make, any substantial change to the general nature of its business from that of engaging in the Group Permitted Business.

13.4 **Record Keeping**

The Guarantor shall:

- (a) keep proper records and books of account in respect of its business in accordance with US GAAP; and
- (b) permit reasonable access to the Facility Agent and/or any professional advisers (who are each bound by professional or other confidentiality obligations) appointed by the Facility Agent to examine its records and books of account.

13.5 **Constitutional Documents**

- (a) The Guarantor shall not request, permit or make any change to the constitutional documents of the Borrower or request, permit or make any change to any Participation Agreement in relation to the partnership interests in the Borrower, without the prior written consent of the Facility Agent, where such change relates to:
  - (i) the substitution, the role, the compensation or other rights to receive payments of the General Partner, the Second General Partner or a silent partner;
  - (ii) the voting rights of partners;
  - (iii) majority requirements;
  - (iv) the legal form of the Borrower; or
  - (v) restrictions on pledges or transfers of partnership interests or Participations.
- (b) In respect of any other change or proposed change to the constitutional documents of the Borrower and any agreements entered into by the General Partner and/or any Limited Partner that is a member of the Group in relation to the Borrower, the Guarantor will provide the Facility Agent with information in relation thereto and also provide the Facility Agent with copies of any such changes to the constitutional documents of the Borrower and/or such agreements.



**Insurance**

- (a) The Guarantor shall:
- (i) maintain or ensure that the Borrower maintains insurance in relation to the Site, on the Borrower's business and the Borrower's assets and all such insurance as may be required by contract with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany; and
  - (ii) maintain insurance in relation to its business and its assets and all such insurance as may be required by contract with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by the Guarantor in the United States.
- (b) Without limiting paragraph (a)(i) above, the Guarantor shall effect and maintain insurance or ensure that insurance is effected and maintained by the Borrower in relation to the Project, on the Borrower's business and the Borrower's assets as deemed sufficient by the Insurance Adviser and as described in the Insurance Report.
- (c) The Guarantor shall:
- (i) ensure that all premiums are paid and that all other things are done as are necessary (to the extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany) to maintain the insurances that the Borrower has taken out in relation to the Borrower's business, its assets and the Site and will procure that all insurance policies or certificates of insurance that the Borrower maintains in relation to the Site and its assets shall contain loss payee provisions acceptable to the Facility Agent and the Security Agent noting the Security Agent's interest thereon and naming the Security Agent as loss payee; and
  - (ii) pay all premiums and do all other things as are necessary (to the extent as is usual for prudent companies carrying on a business such as that carried on by the Guarantor in the United States) to maintain the insurances that it has taken out in relation to its business, its assets and, on behalf of the Borrower, the Site and the Borrower's assets and will procure that all insurance policies or certificates of insurance that it maintains in relation to the Site and the Borrower's assets shall contain loss payee provisions acceptable to the Facility Agent and the Security Agent noting the Security Agent's interest thereon and naming the Security Agent as loss payee.
- (d) The Guarantor shall supply the Facility Agent on request with copies of each receipt or other evidence satisfactory to the Facility Agent for all premiums and other amounts payable by the Guarantor under the insurances effected and maintained by it pursuant to paragraph (a) and (b) above and shall, in any event, use all reasonable endeavours to procure that the insurer in respect of such insurances relating to the Project undertakes to the Facility Agent to notify it should any renewal fee or other sum payable by the Guarantor not be paid when due.
- (e) Upon request, the Guarantor shall supply the Facility Agent with a copy of all insurance policies or certificates of insurance in its possession relating to the Project evidencing compliance with paragraph (a) and (b) above or (in the absence of the same) such other evidence of the existence of any Project related insurance referred to in paragraph (a) above as may be reasonably acceptable to the Facility Agent and shall, in any event, notify the Facility Agent of any material changes to any such Project related insurance made from time to time.

13.7 **Intellectual Property**

The Guarantor shall:

- (a) make such registrations and pay such fees and other amounts as are necessary to keep those registered Intellectual Property Rights owned by or registered in the name of the Guarantor which are material to the Guarantor's or the Borrower's business in force, and to record its interest and/or that of the Borrower in those Intellectual Property Rights;
- (b) observe and comply with all material obligations and laws to which it in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of the Intellectual Property Rights (or any part thereof) is subject where failure to do so might reasonably be expected to have a Material Adverse Effect;
- (c) do all acts as are reasonably practicable (including, without limitation, the institution of legal proceedings) to maintain, protect and safeguard the Intellectual Property necessary for its business and that of the Borrower as a whole; and
- (d) enter into and maintain such licence agreements, and obtain such authorisations, as are necessary for it or the Borrower to use all such Intellectual Property Rights which are material to its business or that of the Borrower where failure to do so, after having taken all reasonable action to enter into and maintain such licence agreements and obtain such authorisations, would or might reasonably be expected to have a Material Adverse Effect.

13.8 **Environmental Compliance**

The Guarantor shall obtain and maintain all requisite Environmental Licences required in relation to its business and comply in all material respects with:

- (a) all applicable Environmental Laws relating to the Group Permitted Business;
- (b) the terms and conditions of all Environmental Licences required in relation to the Group Permitted Business and applicable to it; and
- (c) all other covenants, conditions, restrictions and agreements entered into by or binding on the Guarantor directly or indirectly concerned with any Environmental Contamination required in relation to the Group Permitted Business,

in each case where failure to do so would or might reasonably be expected to have a Material Adverse Effect.

13.9 **Environmental Claims**

The Guarantor shall inform the Facility Agent in writing as soon as reasonably practicable upon its becoming aware of:

- (a) any Environmental Claim which has been commenced or threatened against any Material Subsidiary or Relevant Subsidiary; or

- (b) any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against any Material Subsidiary or Relevant Subsidiary,

where the claim might, if determined against that Material Subsidiary or Relevant Subsidiary, reasonably be expected to have a Material Adverse Effect.

13.10 **Taxation**

- (a) The Guarantor shall duly and punctually pay and discharge all Taxes imposed upon it or its assets and due in Germany and, in respect of material Taxes imposed by non-German Tax authorities, in each case, within the time period allowed without incurring penalties, save to the extent that:
  - (i) payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes; and
  - (iii) payment can be lawfully withheld.
- (b) The Guarantor shall not be materially overdue in the filing of any Tax returns in Germany or the United States.
- (c) The Guarantor shall ensure that it continues to be a company resident for Tax purposes in the United States.

13.11 **Security**

- (a) Save as otherwise permitted by the terms of the Finance Documents, the Guarantor shall ensure that any Security expressed to be created by it by or pursuant to, or, as the case may be, expressed to have been created by it and to be evidenced in, any Security Document to which it is a party remains in full force and effect with the ranking and priority it is expressed to have.
- (b) Save as otherwise permitted by the terms of the Finance Documents, the Guarantor shall not do or omit to do anything or knowingly permit or cause anything to be done or omitted to be done which would or could adversely affect any Security expressed to be created by any Obligor by or pursuant to, or any Security expressed to have been created by any Obligor and to be evidenced in, any Security Document to which it is a party.
- (c) The Guarantor shall take all such action as the Facility Agent or the Security Agent may reasonably request for the purpose of perfecting any such Security.
- (d) The Guarantor shall, if the Security Agent lawfully and in accordance with the terms of the Finance Documents exercises any power (whether of sale or other disposal or otherwise) or right with respect to the Charged Assets, permit the exercise of such power or right.
- (e) The Guarantor has granted or will grant and has caused or will cause to be granted the Security as set out in the Federal/State Guarantor Decision to the Security Agent or the Finance Parties, as the case may be.

13.12 **Pari Passu Ranking**

The Guarantor shall ensure that its payment obligations under the Finance Documents will rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to creditors or certain types of creditors generally.

13.13 **Transaction Documents**

The Guarantor shall comply in all material respects with and perform all of its obligations under the Transaction Documents to which it is a party.

13.14 **Hedging Strategy**

The Guarantor shall implement the Hedging Strategy as may be required pursuant to Schedule 1 (*Hedging Strategy*).

13.15 **Amendments to Transaction Documents**

The Guarantor shall not amend, vary, novate, supplement or terminate any Transaction Document to which it is a party and to which a Finance Party is not a party delivered to the Facility Agent pursuant to Clause 4 (*Conditions of Utilisation*) of the Facility Agreement, or waive any right thereunder, except for:

- (a) any of the foregoing which is expressly consented to in writing by the Facility Agent acting on the instructions of the Majority Lenders or, pursuant to Clause 33.2 (*Exceptions*) of the Facility Agreement, all Lender consent; or
- (b) any amendment, variation or waiver which is of a minor or technical nature or would not adversely affect the rights of the Finance Parties under the Finance Documents.

13.16 **Project Documents**

Except as otherwise specifically provided in the Project Documents or required by or permitted under any Finance Document, the Guarantor shall not, and the Guarantor shall ensure that each of its Relevant Subsidiaries shall not, assign any of its rights or transfer any of its rights or obligations under the Project Documents.

13.17 **Auditors**

The Guarantor shall at all times have its accounts and those of the Relevant Subsidiaries audited by the Auditors.

13.18 **Partnership and Shareholder Interests**

- (a) The Guarantor shall ensure that each of AMD Fab 36 Holding GmbH and the General Partner at all times shall remain a wholly-owned Subsidiary of the Guarantor and shall cause AMD Fab 36 Admin GmbH at all times to be a wholly-owned Subsidiary of AMD Fab 36 Holding GmbH.
- (b) The Guarantor shall cause each of AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH to retain its partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations at all times at the level of the aggregate minimum holding of

at least fifty-one (51) *per cent.* of the capital in the Borrower and to hold no partner or equity interests (*Gesellschaftsanteile*) in any other person (except that AMD Fab 36 Admin GmbH is a wholly-owned subsidiary of AMD Fab 36 Holding GmbH).

- (c) The Guarantor shall not hold at any time any partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations or other interests or participations in the Borrower directly, and shall hold any such partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations indirectly only through:
- (i) the interest of the General Partner as general partner (or, subsequent to a substitution, through AMD Fab 36 Admin GmbH as general partner); and
  - (ii) the interests of AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH as the Limited Partners, and
- all such interests and participations will be pledged to the Lenders under the Partnership Interest Pledges.

13.19 **The Federal/State Guarantee**

The Guarantor will comply and will procure that each Relevant Subsidiary will comply with all the terms of the Federal/State Guarantee Decision which directly apply to it.

13.20 **Cash Shortfalls**

The Guarantor shall at all times make payments to the Borrower, or otherwise provide funds to the Borrower, in each case without delay in the amount of any Cash Shortfalls, by way of equity contributions, Subordinated Loans or, as the case may be, prepayment for products and/or services (not in excess, however, of the Guarantor's obligations under this Guarantee Agreement, the Subordinated Loan Agreements, the Revolving Credit Agreement and the Partnership Agreement, and not giving rise to any right of any person (with the exception of the Borrower (to the extent that it is still a member of the Group)) to enforce the relevant funding arrangements).

13.21 **Material Adverse Effect**

The Guarantor shall not enter into any agreement or obligation:

- (a) which could have a Material Adverse Effect; or
- (b) the performance of which in accordance with its terms would result in a breach of any provision of any Finance Document by any Obligor.

13.22 **Security from the Borrower**

The Guarantor will not take from the Borrower or any Other Surety any Security in respect of the Guarantor's liability hereunder or in respect of any other obligation or liability which the Borrower has or may at any time have to the Guarantor as a result of performance by the Guarantor of its obligations under this Guarantee Agreement. If any such Security is taken from the Borrower or any Other Surety, and any monies or other property or assets is received or recovered by the Guarantor in pursuance of, or in breach of, any of the provisions of Clause 9 (*Claims by Guarantor*), it shall be held on trust (*treuhänderisch halten*) for the Security Agent

to secure the Guarantor's liability hereunder, and upon request by the Security Agent the Guarantor will forthwith deposit such Security with the Security Agent or as it may direct or pay or transfer such monies or other property or assets to the Security Agent for application in or towards the discharge of the Guarantor's Liabilities.

13.23 **Borrower's Undertakings**

The Guarantor will ensure that the Borrower complies with all its obligations under Clause 16 (*Costs and Expenses*), Clause 20 (*General Undertakings*) (in particular, those under Clause 20.35 (*Subsidies*)) and Clause 35 (*The Federal State Guarantee*) of the Facility Agreement.

14. **SET-OFF**

The Security Agent may (in addition to any other right to which it may be entitled), if an Event of Default has occurred and is continuing or the Loans have been accelerated, without notice to the Guarantor or any other person, set-off and apply any credit balance (or any part thereof in such amounts as it may elect) on any account (whether such account is subject to notice or not and whether matured or not and in whatever currency) of the Guarantor with it and any other monies owing by it to the Guarantor against any liabilities (whether present or future, actual or contingent) of the Guarantor to it, and it may purchase with the monies standing to the credit of any such account such other currencies as may be necessary for this purpose.

15. **MISCELLANEOUS**

Neither Agent is obliged to furnish to the Guarantor any information in respect of the Facility Agreement and/or the Guarantor's Liabilities.

16. **NOTICES**

16.1 **Communications in Writing**

Any communication to be made under or in connection with this Guarantee Agreement shall be made in writing and, unless otherwise stated, may be made by fax, letter or telex.

16.2 **Addresses**

The address, fax number and telex number (and the department or officer, if any, for whose attention the communication is to be made) of the Guarantor, the Security Agent and the Facility Agent for any communication or document to be made or delivered under or in connection with this Guarantee Agreement is:

(a) in the case of the Guarantor:

Address: One AMD Place M-S 68  
Sunnyvale, California 94088  
Fax number: +1 408 774 7399  
Attention: General Counsel;

(b) in the case of the Security Agent:

Address: Koppenstrasse 93  
10877 Berlin  
Fax Number: +49 30 3153 2317  
Attention: Hans-Jürgen Dittmann;

(c) in the case of the Facility Agent:

Address: Dresdner Bank Luxembourg S.A.  
26, rue du Marché-aux-Herbes  
L-2097 Luxembourg

Fax Number: +352 4760 3222  
Attention: Agencies  
Albertine Prellwitz, Katja Paul

Copies:

Fax Number: +352 4760 565  
Attention: Loan Administration  
Andrea Stockemer, Eva Marmitt,

or any substitute address, fax number, telex number or department or officer as the Guarantor may notify to an Agent (or an Agent may notify to the Guarantor, if a change is made by such Agent) by not less than five (5) Business Days' notice.

16.3

**Delivery**

(a) Any communication or document made or delivered by one person to another under or in connection with this Guarantee Agreement will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being sent by international courier addressed to it at that address; or
- (iii) if by way of telex, when despatched, but only if, at the time of transmission, the correct answerback appears at the start and at the end of the sender's copy of the notice,

and, if a particular department or officer is specified as part of its address details provided under Clause 16.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to an Agent will be effective only when actually received by it and then only if it is expressly marked for the attention of the department or officer identified as part of its address details provided under Clause 16.2 (*Addresses*) (or any substitute department or officer as it may specify for this purpose).

16.4

**Language**

(a) Any notice and any other document given under or in connection with this Guarantee Agreement must be in English, unless otherwise required by applicable laws or regulations or the Federal/State Guarantor.

- (b) Whichever language is chosen or required for a particular notice or any particular document given under or in connection with this Guarantee Agreement shall prevail over that of any accompanying translation.
- 17. FURTHER ASSURANCE**
- The Guarantor confirms that it has taken, and will continue to take, all necessary steps to ensure that any amount claimed by an Agent from it hereunder can be transferred to it immediately, free of any deduction, cost or charges whatsoever.
- 18. PARTIAL INVALIDITY**
- If, at any time, any provision of this Guarantee Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 19. AMENDMENTS**
- No amendment or modification of or to any provision of this Guarantee Agreement, including, without limitation, this Clause 19, shall be effective unless the same shall be in writing and signed by or on behalf of each party hereto.
- 20. COUNTERPARTS**
- This Guarantee Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Guarantee Agreement.
- 21. ASSIGNMENT**
- 21.1 Successor and Assigns**
- This Guarantee Agreement shall be binding upon and inure to the benefit of the parties to this Guarantee Agreement and their respective successors and permitted assigns.
- 21.2 The Guarantor**
- The Guarantor shall not assign or otherwise transfer the benefit of this Guarantee Agreement or any of its rights, duties or obligations under this Guarantee Agreement without the prior written consent of the Security Agent.
- 21.3 The Agents**
- Each Agent may assign or transfer all or any part of the benefits of this Guarantee Agreement and any of its rights, duties and obligations under this Guarantee Agreement without the consent of the Guarantor and for such purposes each Agent may disclose, in accordance with the terms of the Facility Agreement, to a potential assignee or transferee such information about the Guarantor, this Guarantee Agreement and the transactions contemplated by this Guarantee Agreement as it considers appropriate.



21.4 **Change in Status**

This Guarantee Agreement shall remain binding on the Guarantor notwithstanding any change in the constitution of an Agent, the Guarantor or the Borrower or its absorption in, amalgamation with or merger into, or the acquisition of all or part of its undertaking by any other person, to the intent that the security created by this Guarantee Agreement shall remain valid and effective in all respects in favour of any assignee or successor in title of an Agent in the same manner as if such assignee or successor in title had been named as a party to this Guarantee Agreement instead of, or in addition to, such Agent and (as the case may be) on or in respect of the obligations and liabilities of any successor entity to the Guarantor or the Borrower in the same manner as if such successor entity had been named in this Guarantee Agreement instead of, or in addition to, the Guarantor or the Borrower respectively.

22. **CONFIDENTIALITY**

- (a) Except as otherwise set out in Clause 21.3 (*The Agents*), this Guarantee Agreement and the contents and existence of the same are strictly confidential and, without the prior written consent of the other parties hereto, shall not be disclosed to, or relied upon by, any person except as required by law or to comply with the applicable rules or requests of any regulatory body or to its employees or legal or financial advisers who have a need to know this information and who are made aware of and agree to be bound by the obligations under this paragraph.
- (b) Notwithstanding the foregoing or anything to the contrary in this Guarantee Agreement or any other written or oral understanding or agreement to which the parties hereto are parties or by which they are bound, each party to this Guarantee Agreement shall be permitted to disclose the tax treatment and tax structure of the transactions set forth herein and in the other Finance Documents. This permission to disclose includes the ability of each party to consult, without limitation of any kind, any tax advisor regarding the tax treatment or tax structure of the transactions set forth herein and in the other Finance Documents. The parties acknowledge that this written authorisation does not constitute a waiver by any party of any privilege held by such party pursuant to the attorney-client privilege or the confidentiality privilege of Section 7525 (a) of the US Internal Revenue Code of 1986, as amended, or pursuant to any similar laws and regulations in any relevant other jurisdiction.

23. **GOVERNING LAW**

This Guarantee Agreement is governed by German law.

24. **ENFORCEMENT**

24.1 **Jurisdiction of German courts**

The District Court of Frankfurt am Main has exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee Agreement (including a dispute regarding the existence, validity or termination of this Guarantee Agreement).

24.2 **Process Agent**

The Guarantor irrevocably appoints the Borrower of Wilschdorfer Landstrasse 101, 01109 Dresden, Germany as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Germany. If for any reason the agent named above (or its successor) no longer serves as agent of the Guarantor for this purpose, the Guarantor shall promptly appoint a successor agent approved by the Agents and

---

notify both Agents thereof. Until an Agent receives such notification, it shall be entitled to treat the agent named above (or its said successor) as the agent of the Guarantor for the purposes of this Clause. The Guarantor agrees that any such legal process shall be sufficiently served on it if delivered to such agent for service at its address for the time being in Germany whether or not such agent gives notice thereof to the Guarantor.

**This Guarantee Agreement has been entered into on the date stated at the beginning of this Guarantee Agreement.**

---

**SCHEDULE 1**

**Hedging Strategy**

The minimum percentage of the Group's interest bearing debt under rate fixing arrangements shall be determined by reference to the lowest of all Credit Ratings as set out in the table below:

| <u>Moody's Rating</u> | <u>Standard and Poor's Rating</u> | <u>Percentage</u> |
|-----------------------|-----------------------------------|-------------------|
| B2 or lower           | B or lower                        | 60%               |
| B1                    | B+                                | 50%               |
| Ba3                   | BB-                               | 40%               |
| Ba2                   | BB                                | 30%               |
| Ba1                   | BB+                               | 20%               |
| Baa3 or better        | BBB- or better                    | 0%                |

SCHEDULE 2

Form of Compliance Certificate

To: **Dresdner Bank Luxembourg S.A.** as Facility Agent

From: **Advanced Micro Devices, Inc.**

Dated:

Dear Sirs

**Guarantee agreement dated 21 April 2004 (the “Guarantee Agreement”)**

1. We refer to the Guarantee Agreement. This is a Compliance Certificate.\*
2. Save where the context requires otherwise, terms defined in the Guarantee Agreement have the same meanings when used in this certificate.
3. In particular, we refer to Clause 11.1 (*Financial Statements*) and Clause 12 (*Financial Covenants*) of the Guarantee Agreement. We also refer to the quarterly financial statements for the fiscal quarter ended [insert date] delivered to you on [insert date] in accordance with paragraph (b) of Clause 11.1 (*Financial Covenants*).
4. We confirm that on the basis of the financial information contained in the above quarterly financial statements, as at [[the end of the fiscal quarter]/[the end of the fiscal year]] set out below, the following financial ratios or amounts calculated in accordance with and as required by Clause 12 (*Financial Covenants*) were as follows:

| <u>Covenant</u>  | <u>Amount in USD</u> |
|--|----------------------|
| Adjusted Tangible Net Worth as at [state fiscal year]<br>(Clause 12.2 ( <i>Adjusted Tangible Net Worth</i> )). | [ ]                  |

| <u>Covenant</u>   | <u>Amount in USD</u> |
|---|----------------------|
| EBITDA as at [state fiscal quarter]<br>(Clause 12.3 ( <i>EBITDA</i> )). | [ ]                  |

Accordingly, we confirm that the financial covenants set out in Clause 12 (*Financial Covenants*) [have/have not] been complied with during the period in question.

\* To be issued only if compliance is required pursuant to paragraph (a) of Clause 11.2 (*Compliance Certificate*).

---

Signed: \_\_\_\_\_

**[[Chief Financial Officer]/[Director of Treasury]/[Treasurer]]**  
of  
**Advanced Micro Devices, Inc.**

*[insert applicable certification language]*

\_\_\_\_\_  
for and on behalf of  
**Ernst & Young**

SCHEDULE 3

Form of Monthly Consolidated Cash Reports

To: **Dresdner Bank Luxembourg S.A.** as Facility Agent

From: **Advanced Micro Devices, Inc.**

Dated:

Dear Sirs

**Guarantee agreement dated 21 April 2004 (the "Guarantee Agreement")**

1. We refer to the Guarantee Agreement. This is a Compliance Certificate.
2. Save where the context requires otherwise, terms defined in the Guarantee Agreement have the same meanings when used in this certificate.
3. In particular, we refer to paragraph (c) of Clause 11.1 (*Financial Covenants*) of the Guarantee Agreement and to the reports for the Month ended [*insert date*] delivered to you on [*insert date*] pursuant thereto.
4. We confirm the accuracy of the figures and financial information reported below:

| <u>Credit Rating</u>           | <u>Moody's</u>       | <u>Standard &amp; Poor's</u> |
|--------------------------------|----------------------|------------------------------|
|                                | [   ]                | [   ]                        |
| <u>Group Consolidated Cash</u> | <u>Amount in USD</u> |                              |
|                                | [   ]                |                              |

Signed: \_\_\_\_\_

*[name of duly authorised officer]*  
of  
**Advanced Micro Devices, Inc.**

Attachment:

Monthly report containing unaudited Group cash balances.\*

\* NB. As previously provided by the Guarantor.

---

**SIGNATORIES**

**The Guarantor**

**ADVANCED MICRO DEVICES, INC.**

by: /s/ **Robert J. Rivet**

---

Name, title: Robert D. Rivet, CFO

**The Borrower**

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG**

by: /s/ **Hans R. Deppe**

---

Name, title: Dr. Hans R. Deppe

**The Security Agent**

**DRESDNER BANK AG in BERLIN**

by: /s/ **Leimbach**

---

Name, title:

**The Facility Agent**

**DRESDNER BANK LUXEMBOURG S.A.**

by: /s/ **Bill H. Fish**  
/s/ **A. Scheer**

---

Name, title: William H. Fish;  
Andreas Scheer, Director

**LICENSE AGREEMENT**

Dated April 21, 2004

between

**ADVANCED MICRO DEVICES, INC.,**

**AMD FAB 36 HOLDING GMBH,**

and

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG**



---

## LICENSE AGREEMENT

This **LICENSE AGREEMENT** (this "Agreement") dated as of April 21, 2004 is between:

(1) **Advanced Micro Devices, Inc.**, a corporation organized and existing under the laws of the State of Delaware, United States of America, with its principal place of business at One AMD Place, Sunnyvale, California 94088, United States of America ("AMD Inc.");

(2) **AMD Fab 36 Holding GmbH**, a *Gesellschaft mit beschränkter Haftung* organized and existing under the laws of Germany and registered in the Commercial Register of the Dresden County Court, HRB 21270 ("AMD Fab 36 Holding"); and

LIMITED PARTNERSHIP AGREEMENT

of

AMD Fab 36 Limited Liability Company & Co. KG (the "Partnership")

by and between

1. AMD Fab 36 LLC, a Delaware company, business address: One AMD Place, Sunnyvale, CA 94088, California, U.S.A.,

- hereinafter referred to as the "General Partner" or AMD Fab 36 LLC" -

and

2. LM Beteiligungsgesellschaft mbH, Leipzig, registered under HRB 20581 in the Commercial Register kept at the Amtsgericht [Local Court] Leipzig, business address: Messe-Allee 1, 04356 Leipzig,

- hereinafter referred to as the "Second General Partner" -

and

3. AMD Fab 36 Holding GmbH, Dresden, registered under HRB 21270 in the Commercial Register kept at the Amtsgericht Dresden, business address: Wilschdorfer Landstraße 101, 01109 Dresden,

- hereinafter referred to as the "Fab 36 Holding" -

and

4. AMD Fab 36 Admin GmbH, Dresden, registered under HRB 22350 in the Commercial Register kept at the Amtsgericht Dresden, business address: Wilschdorfer Landstraße 101, 01109 Dresden,

- hereinafter referred to as the "Fab 36 Admin" -

and

---

5. Leipziger Messe GmbH, Leipzig, registered under HRB 622 in the Commercial Register kept at the Amtsgericht Leipzig, business address: Messe-Allee 1, 04356 Leipzig,  
- hereinafter referred to as the "**Leipziger Messe GmbH**" –

and

6. Fab 36 BeteiligungsGmbH, Stuttgart, registered under HRB 23351 in the Commercial Register kept at the Amtsgericht Stuttgart, business address: Lotterbergstrasse 30,  
70499 Stuttgart,  
- hereinafter referred to as "**M+W**" –

Fab 36 Holding and Fab 36 Admin hereinafter collectively referred to as the "**AMD Limited Partners**".

The General Partner, Fab 36 Holding and Fab 36 Admin hereinafter collectively referred to as the "**AMD Partners**".

The Leipziger Messe GmbH, the General Partner, Fab 36 Holding, Fab 36 Admin, M+W and the Second General Partner hereinafter collectively referred to as the "**Partners**".

---

TABLE OF CONTENTS

|             |  |    |
|-------------|--|----|
| PREAMBLE    |  | 4  |
| Article 1   | NAME AND REGISTERED OFFICE                                       | 5  |
| Article 2   | PURPOSE OF THE PARTNERSHIP                                       | 5  |
| Article 3   | PARTNER CONTRIBUTIONS AND PARTNERS                               | 6  |
| Article 4   | PARTNER ACCOUNTS   | 8  |
| Article 5   | MANAGEMENT AND REPRESENTATION                                    | 9  |
| Article 6   | CONFIDENTIALITY  | 10 |
| Article 7   | PARTNERS' MEETING  | 12 |
| Article 8   | PARTNERS' COMMITTEE  | 15 |
| Article 9   | ANNUAL FINANCIAL STATEMENTS AND APPROPRIATION OF THE PROFIT/LOSS | 17 |
| Article 10  | DISPOSITION OF SHARES, OPTIONS                                   | 20 |
| Article 10a | SPECIAL AGREEMENTS CONCERNING THE SECOND GENERAL PARTNER         | 24 |
| Article 11  | TERM AND TERMINATION   | 25 |
| Article 12  | EXPULSION OF A PARTNER / COMPULSORY ASSIGNMENT                   | 26 |
| Article 13  | COMPENSATION   | 29 |
| Article 14  | LIQUIDATION  | 29 |
| Article 15  | AUTHORITY FOR THE COMMERCIAL REGISTER                            | 29 |
| Article 16  | NOTIFICATIONS  | 30 |
| Article 17  | PARTIAL INVALIDITY AND AMENDMENTS                                | 30 |
| Article 18  | ARBITRATION AGREEMENT  | 30 |

---

## Preamble

On 20 November 2003, the Free State of Saxony as co-shareholder of Leipziger Messe GmbH, M+W and Advanced Micro Devices, Inc. (hereinafter “**AMD Inc.**”), which is the direct and/or indirect sole shareholder of the General Partner and of the AMD Limited Partners, entered into a Cooperation Agreement in order to use and develop to the industrial production stage semiconductor manufacturing technology and to produce 300 mm silicon wafers on which integrated circuits, in particular, for microprocessors are fabricated (“**Wafer**”) at a wafer production facility to be built in Dresden, in particular, for microprocessors, (hereinafter the “**Fab 36**”) with the support and the participation of the Free State of Saxony. Fab 36 is to be built and operated by the Partnership for this purpose. The Free State of Saxony uses Leipziger Messe GmbH as a Holding Company within the meaning of the Cooperation Agreement. Besides their interests as limited partners of the Partnership, Leipziger Messe GmbH and M+W each participate in Fab 36 with a typical silent partner’s interest within the framework of the simultaneously concluded agreement on the formation of a silent partnership (“**Silent Partnership Agreement**”).

In December 2002, AMD Inc. entered into an extensive agreement with IBM for the joint development (Joint Development Agreement, hereinafter referred to as the “**JDA**”) of a technological basis for the manufacture of chips for high performance products of the future. The JDA encompasses cooperation in the range of 65 and 45 nm technology generations with the possibility of even smaller sized structures. This groundwork will be carried out on the basis of 300 mm Wafers. The manufacturing technology is intended to be adjusted, by continuous and rapid improvement, to the requirements of mass production and further developed according to market requirements.

Fab 36 is intended to be built beside the existing Fab 30. The commencement of industrial production is planned for 2006. The full capacity for the exclusive requirements of AMD Group companies is intended to be 13,000 Wafer outs per month. Buildings and clean room are designed for a capacity of 20,000 Wafer outs per month, which is to be used upon the joining of a further industrial partner. Up to approximately 1,035, [\*\*\*] up to 1,400 qualified new jobs are intended to be created in Fab 36. Additional jobs at suppliers will also result. The Free State of Saxony attaches particular importance to the fact that the technological and financial basis of Fab 36 is secured as much as possible and will be further developed in Fab 36 and furthermore that its capital bears reasonable interest (“**stand alone**”).

---

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .*

---

Now, therefore, the parties hereto enter into the following Limited Partnership Agreement:

**Article 1 NAME AND REGISTERED OFFICE**

1.1 The name of the Partnership is “AMD Fab 36 Limited Liability Company & Co. KG”.

1.2 The registered office of the Partnership is located in Dresden.

**Article 2 PURPOSE OF THE PARTNERSHIP**

2.1 The purpose of the Partnership is the development of manufacturing technology to an industrial production stage and the production of microelectronic components on 300 mm Wafers initially in the range of 65 nm, later on also in the range of 45 nm technology generations with the possibility of even smaller sized structures in Dresden.

2.2 The Partnership shall have the right to perform any and all acts serving to achieve the purpose of the Partnership, directly or indirectly.

2.3 The Partnership may take an interest in, or acquire or form, companies with the same or a similar purpose. It may establish branches. This applies to both national and foreign territory in each case.

2.4 The participation of Leipziger Messe GmbH is intended to maintain and develop the Free State of Saxony as a center for microelectronics, in particular, to maintain and develop Dresden as a high-technology location, so as to maintain and create jobs for qualified staff. The participation of the AMD Partners is intended to build up a further manufacturing location in Dresden with own funds of the AMD Group, Leipziger Messe GmbH and of M+W. In addition to production, own research and development on a considerable scale to develop up to the industrial production stage semiconductor manufacturing technology will be carried out at Fab 36.

---

### Article 3 **PARTNER CONTRIBUTIONS AND PARTNERS**

3.1 The partnership capital (limited partners' contributions I and II) amounts to Euro 765 million (in words: sevenhundredandsixtyfivemillion Euro).

3.2 The general (personally liable) partners are AMD Fab 36 LLC and the Second General Partner. They hold no interest in the assets of the Partnership.

3.3 The limited partners are:

3.3.1 Fab 36 Holding with a liability capital of € 323,000 until the first milestone for Leipziger Messe GmbH (LM I) pursuant to **Appendix 3.3** and from such point in time a liability capital of € 3,230,000 in total (limited partners' contribution I of Fab 36 Holding) and an additional limited partners' contribution of € 581,408,000 (limited partners' contribution II); Fab 36 Holding shall have the right of earlier increase of the liability capital to be contributed by it,

3.3.2 Fab 36 Admin with a liability capital of € 200 (limited partners' contribution I of Fab 36 Admin) until the first milestone for Leipziger Messe GmbH (LM I) pursuant to **Appendix 3.3** and from such point in time a liability capital of € 2,000 in total (limited partners' contribution I of Fab 36 Admin) and an additional limited partners' contribution of € 360,000 (limited partners' contribution II); Fab 36 Admin shall have the right of earlier increase of the liability capital to be contributed by it,

3.3.3 Leipziger Messe GmbH with a liability capital of € 110,500 until the first milestone for Leipziger Messe GmbH (LM I) pursuant to **Appendix 3.3** and from such point in time a liability capital of € 1,105,000 in total (limited partners' contribution I of Leipziger Messe GmbH) and an additional limited partners' contribution of € 118,895,000 (limited partners' contribution II), and

3.3.4 M+W with a liability capital of € 66,300 (limited partners' contribution I of M+W) until the first milestone for Leipziger Messe GmbH (LM I) pursuant to **Appendix 3.3** and from such point in time a liability capital of € 663,000 in total (limited partners' contribution I of M+W) and an additional limited partners' contribution of € 59,337,000 (limited partners' contribution II).

3.4 The registration of the respective increased liability capital amounts shall simultaneously be arranged for all Partners upon occurrence of the first milestone for Leipziger Messe GmbH (LM I) pursuant to the milestone regulation attached as **Appendix 3.3**. Each Partner may increase its liability capital contribution at a date before the aforesaid date.

3.5 The limited partners' contribution I shall be due and payable at the points in time specified in **Appendix 3.3**. The limited partners' contribution II shall be due and payable at the points in time specified in **Appendix 3.3**. Payment shall be made by the installments specified therein. The limited partners' contribution I and the first installment of the limited partners' contribution II each of Leipziger Messe GmbH and M+W shall be due and payable at the earliest after transfer of the title to the real property described in **Appendix 3.4** of AMD Saxony Limited Liability Company & Co. KG ("AMD Saxony") to AMD Fab 36 or, in lieu thereof, after an application for registration of the new owner has been filed and only the issuance of the official record of change [Veränderungsnachweis] by the municipal land surveying office [Vermessungsamt] and the conveyance on the basis of such official record of change are still required for the registration of the new owner (in this respect, the application does not need to be sufficient for actual entry in the land register).

Every limited partner shall have the right to waive the requirement that any or all of the specified requirements are satisfied before the limited partners' contribution II becomes due by written notice to the respective other parties.

The respective Partner shall owe interest on unpaid contributions at a rate of 6.5 % per annum within the first two (2) weeks from the due date and thereafter at a rate of 13 % per annum which shall be debited to the Partner's limited partners' contribution account on a monthly basis; the right to claim further damages remains unaffected. If a Partner defaults [Verzug] in making its contribution, the Partnership shall be entitled to decide by partner resolution to expel the Partner pursuant to para. 12.2.3 after fruitless expiration of an additional period of not less than fifteen (15) days from notification of a warning of rejection to accept the contribution.

3.6 The liability of the limited partners towards the creditors of the Partnership shall be limited to the relevant liability amounts specified in para. 3.3 .

3.7 Every limited partner shall be entitled to make contributions to the Partnership in excess of the limited partners' contributions I and II. Such contributions may be withdrawn at any time unless there are contradicting covenants or requirements under the Federal/State Guaranty Decision and/or the Syndicated Loan Agreement (in each case, as amended). In case of Leipziger Messe GmbH and M+W, such additional contribution requires prior written Partners' Resolution which shall provide also for the conditions and possible time limitations of a withdrawal.



---

#### Article 4 PARTNER ACCOUNTS

4.1 For every limited partner a limited partners' contribution account I (liability capital account), a limited partners' contribution account II, a contribution account III, a current account, a profit reserve account and, in addition, for each of the AMD Limited Partners a loss carryover account and for Leipziger Messe GmbH and for M+W a profit netting account shall be kept.

4.2 The limited partners' contribution account I and the limited partners' contribution account II (collectively the "**Capital Accounts**") will be kept as non-interest-bearing fixed accounts. The contribution account III will be kept as non-interest bearing variable capital account. The limited partners' contribution I will be entered in the limited partners' contribution account I. The limited partners' contribution II will be entered in the limited partners' contribution account II. Contributions of a Partner (Section 3.7) in excess of the sum of the limited partners' contribution I and the limited partners' contribution II will be entered in the contribution account III.

4.3 Withdrawable profit shares, withdrawals, interest on such account and other payment transactions between the limited partners and the Partnership will be entered on the current accounts. The balances on the current accounts are liabilities and/or claims of the Partners and of the Partnership. The accounts shall bear interest at a rate of 6.5 % per annum calculated on an equated basis.

4.4 Non-withdrawable profit shares will be entered in the profit reserve accounts. The accounts shall bear interest at a rate of 6.5% per annum calculated on an equated basis. These accounts do not constitute liabilities of the Partnership. However, in the event of liquidation of the Partnership, they vest a claim for preferential payment and may be transferred only together with the limited partner's interests.

4.5 The pro rata losses will be entered in the loss carryover accounts. These accounts are non-interest-bearing and, in the event of transfer of limited partner's interests, they devolve on the legal successor. The loss carryover accounts do not constitute liabilities of the Partners. However, in the event of liquidation of the Partnership, they have to be settled in advance without any additional funding obligation of the limited partners resulting therefrom.

4.6 A current account will be kept each for the General Partner and the Second General Partner. In particular, remuneration for activities/compensation for liability and reimbursement of expenses shall be entered in such current account. This account shall bear credit interest and debit interest at a rate of 6.5% p.a..

---

4.7 The profit claims of Leipziger Messe GmbH and of M+W pursuant to para. 9.5.3 sentence 3 will be entered in the profit netting accounts. They serve for the calculation of the profit claims of Leipziger Messe GmbH and of M+W in accordance with para. 9.5.4. The profit shares on these accounts shall bear interest at a rate of 6.5 % per annum calculated on an equated basis.

**Article 5 MANAGEMENT AND REPRESENTATION**

5.1 The management and the representation shall be the right and the obligation solely of the General Partner. The General Partner shall manage the affairs of the Partnership in accordance with the statutory provisions and this Limited Partnership Agreement. The Second General Partner shall always be excluded from the management and the representation.

5.2 The General Partner and its managers shall be exempted from the restrictions of Section 181 BGB [German Civil Code] for all legal acts performed together with or vis-à-vis the Partnership.

5.3 The General Partner shall receive a remuneration of € 25,000, plus applicable VAT as the case may be, payable in advance on an annual basis, for its activity. This remuneration constitutes expenditure of the Partnership. In addition, the Partnership shall reimburse the General Partner, once they accrue, any and all reasonable expenses and expenditure incurred for the management, against submission of supporting documents, as well as legal VAT on the remuneration, expenses and expenditure. The Second General Partner shall receive a liability remuneration in an amount equal to 6.5 % per annum of its capital stock of EUR 25,000 plus applicable VAT as the case may be.

5.4 Prior approval by way of a partner resolution shall be required for any and all transactions which are beyond the operative business of the Partnership's commercial undertaking. Section 164 HGB [German Commercial Code] shall, however, be excluded in all other respects. It is the principal understanding of the contract parties that the operative management of the business on its own responsibility shall be incumbent on the General Partner except as otherwise provided in this Limited Partnership Agreement.

---

5.5 Fab 36 Holding shall have the sole authority to make any tax elections for the Partnership in respect of the United States (or any state or political subdivision thereof), and to sign and file any necessary documents in this regard that Fab 36 Holding, in its sole discretion, deems appropriate.

**Article 6 CONFIDENTIALITY**

6.1 Every Partner shall be obligated to treat confidentially and not to disclose to third parties any information which the Partner must reasonably regard as being confidential and of which the Partner learns in its capacity as party hereto. No Partner may use such information for purposes other than those for which it received the information. The Partners undertake to impose also on their staff members, company representatives and shareholders as well as lenders a duty of confidentiality to the extent provided hereunder. The Partners will make information accessible to their staff members, employees, lenders, equity investors or consultants only if and to the extent that the same need to know such information for the performance of this Limited Partnership Agreement and are subject to respective duties of confidentiality. Confidential information may be disclosed by any Partner to members of the profession of lawyers, certified public accountants or tax advisers, who are bound by the professional duty of secrecy, if and to the extent necessary to safeguard its own legitimate interests. Disclosure of confidential information to the banks funding Fab 36 and/or the capital contributions of the Fab 36 Partners or to the guarantors securing the bank loans or to the European Union shall be permissible provided that equivalent duties of confidentiality apply (in the case of the European Union as far as provided by law). Further exemptions from the duty of confidentiality may, in the individual case, be permitted by unanimous partner resolution.

Notwithstanding the foregoing or anything to the contrary in this Agreement or in any other written or oral understanding or agreement to which the parties hereto are parties or by which they are bound, each Partner shall be permitted to disclose the US income tax treatment and US income tax structure of the transactions set forth herein and set forth in related agreements. This permission to disclose includes the ability of each Partner to consult, without limitation of any kind, any tax advisor regarding the US income tax treatment or US income tax structure of the transactions set forth herein and set forth in related agreements. This right does not include the disclosure of other information including, but not limited to, (i) any parts of documentation which do not concern the US income tax treatment or US income tax structure of the transactions as

---

set out in this Agreement or in related agreements, (ii) the identity of participants or potential participants in the transactions except as such information concerns the US income tax treatment or the US income tax structure of the transactions as set out in this Agreement or in related agreements, (iii) the existence or the status of negotiations, (iv) any financial information except financial information relating to the US income tax treatment or US income tax structure of the transactions as set forth in this Agreement or in related agreements, or (v) any other condition or any other detail which is not of significance for the US income tax treatment or US income tax structure of the transactions set forth in this Agreement or in related agreements. The Partners acknowledge that this written authorization does not constitute a waiver by any party of any privilege held by such party pursuant to the attorney-client privilege or the confidentiality privilege of Section 7525(a) of the U. S. Internal Revenue Code of 1986, as amended.

6.2 This obligation shall survive the termination of this Limited Partnership Agreement and/or the withdrawal of the obligated party from the Partnership.

6.3 This obligation does not apply to information which (i) is generally known, or (ii) has demonstrably been developed independently by the receiving Partner, or (iii) has been lawfully obtained from a third party other than through breach of a duty of confidentiality.

6.4 Furthermore, this obligation does not apply if and to the extent that the Partners are obligated by law or on the basis of orders of government authorities or according to applicable stock exchange rules to disclose the information received.

6.5 The Partners note that, within the framework of the political decision-making, the Free State of Saxony as shareholder of Leipziger Messe GmbH will have to submit the draft agreements to Saxon ministries, to the Saxon cabinet and to the Saxon parliament. The same applies to the City of Leipzig as shareholder of Leipziger Messe GmbH. There shall be no liability of the Free State and/or of Leipziger Messe GmbH for breach of confidentiality within the framework of the respective decision-making. There exist no damage claims whatsoever in this respect, including, but not limited to, claims on the basis of Section 839 BGB and Article 34 GG [German Constitution]. Any waiver of damage claims shall produce effects as a contract in favor of third parties, in particular, in light of Section 839 BGB. Technical data and technical details must be fully protected; no limitation of liability pursuant to sentence 3 applies in this respect. Section 394, 395 AktG [German Act on Stock Corporations] shall apply, mutatis mutandis, to the reporting of the representatives of the limited partner Leipziger Messe GmbH in the partners' meeting and the partners' committee towards the Free State of Saxony.

---

Article 7 **PARTNERS' MEETING**

7.1 In addition to the matters otherwise incumbent on the partners' meeting according to this Limited Partnership Agreement or on the basis of mandatory law, the partners' meeting shall pass resolutions concerning the following matters:

7.1.1 adoption of the audited and certified annual financial statements and appropriation of the profit/loss for the year,

7.1.2 granting discharge to the General Partner,

7.1.3 election of the auditor,

7.1.4 amendment of the Limited Partnership Agreement,

7.1.5 increase of the liability capital contributions (limited partners' contributions I),

7.1.6 sale and transfer of, or grant of a subinterest in, partnership interests, agreements with respect to trusteeship or similar structures regarding partnership interests and admission of new partners, to the extent not excluded by Article 10,

7.1.7 compulsory assignment and expulsion of Partners pursuant to Article 12,

7.1.8 matters concerning the partners' committee as specified in more detail in para. 8.1 and para. 8.2,

7.1.9 dissolution of the Partnership including appointment and removal of liquidators,

7.1.10 increase of the limited partners' contribution II,

7.1.11 decisions which have a material detrimental impact on the production, research and development at Fab 36,

7.1.12 decisions concerning Fab 36 which are materially detrimental to the location Dresden of Fab 36, and

---

7.1.13 all measures which may considerably adversely affect the state of affairs, the financial and earning position of the Partnership.

7.2 An ordinary partners' meeting shall be held in every business year not later than two (2) months after audit of the annual financial statements for the preceding business year. The agenda of such partners' meeting shall include at least the items referred to in paragraphs 7.1.1, 7.1.2 and 7.1.3. In addition, a partners' meeting shall be held if and when the adoption of a resolution is required under this Limited Partnership Agreement or by law and upon request of a Partner.

7.3 The partners' meetings shall be held at the place of the registered office of the Partnership or at any other place agreed by all Partners.

7.4 No partners' meeting is required if all Partners agree to or participate in the adoption of resolutions by written procedure, by teletype, by telefax or electronically (by e-mail). The votes shall be addressed to the Partnership.

7.5 The partners' meeting shall be called by the General Partner. Each Partner may, at any time, request the General Partner to call a partners' meeting; this shall not apply to the Second General Partner. In the event that the managing director of the General Partner fails to comply with such request within two (2) weeks, the requesting Partners may themselves call a partners' meeting. Notice of meeting shall be deemed duly given if it is mailed by registered letter together with the agenda to all Partners to the address last made known to the Partnership no later than two (2) weeks before the day of the partners' meeting. Form and time requirements regarding the calling of partners' meetings may be waived if all Partners agree.

7.6 The partners' meetings shall be chaired by the General Partner or, if the General Partner is not present or represented, by a chairman of the meeting who will be elected under the leadership of the Partner representative oldest in age before dealing with the items on the agenda. The chairman of the meeting shall establish that a quorum is present at the partners' meeting and decide on the method of voting, unless otherwise decided by the partners' meeting by way of resolution.

7.7 The resolutions of the partners' meeting shall be adopted by a simple majority of the votes cast, unless a different majority is mandatorily required by law or by this Limited Partnership Agreement. In the event of equality of votes, the motion shall be deemed rejected. Abstentions shall not be considered as votes. Every full Euro on the committed limited partners' contribution accounts I shall entitle the owner thereof to one (1) vote; the General Partner shall have one (1) vote more than those of all limited partners together. The Second General Partner has no voting right.

---

7.8 Resolutions concerning the following matters shall be adopted by the partners' meeting unanimously:

7.8.1 [\*\*\*] pursuant to para. [\*\*\*], unless expressly provided otherwise in this Agreement

7.8.2 [\*\*\*] of the Partnership pursuant to para. [\*\*\*],

7.8.3 [\*\*\*] to para. [\*\*\*],

7.8.4 measures which, in their importance, correspond to the subject matters set out above (in para. [\*\*\*] through para. [\*\*\*])

7.8.5 decisions pursuant to para. [\*\*\*].

7.9 Resolutions concerning para. [\*\*\*] and para. [\*\*\*] shall be adopted by the partners' meeting by a majority of [\*\*\*] of the votes.

7.10 The partners' meeting shall constitute a quorum if the General Partner and, in addition, at least half the voting limited partners' capital is present or represented. If a partners' meeting does not constitute a quorum, a new partners' meeting shall immediately be called pursuant to para. 7.5 which shall constitute a quorum for the items on the agenda of the partners' meeting lacking a quorum regardless of the number of represented votes or whether the General Partner is present; this shall be specified in the notice of the new meeting.

7.11 Every Partner may be represented or accompanied in a partners' meeting by an employee authorized in writing or by another Partner authorized in writing or by a member of the profession of lawyers, certified public accountants or tax advisers who is bound by the professional duty of secrecy by operation of law. Leipziger Messe GmbH may be represented by authorized representatives of the Free State of Saxony.

---

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .*

---

7.12 The resolutions of the partners' meeting shall be recorded in minutes which shall be signed by the chairman of the partners' meeting. A copy of these minutes shall be sent to all Partners. The documents evidencing that the partners' meeting has been called in a timely manner shall be kept. For resolutions of the Partners other than those adopted in partners' meetings, a record shall be prepared of the contents, the voting procedure and the result of the vote. This record shall be signed by all managing directors and be sent in copy to all Partners by registered letter ("throw-in" registered letter) or otherwise against proof of receipt.

7.13 Invalidity of partner resolutions may be claimed only by filing an action against the Partnership within two (2) months from adoption of the resolution, or in the case of para. 7.12. sentence 3 since mailing of the letter. This period may be extended by unanimous partner resolution.

#### Article 8 **PARTNERS' COMMITTEE**

8.1 The partners' meeting shall, by resolution, set up a partners' committee composed of six (6) members and lay down rules of procedure for such partners' committee. The partners' meeting shall appoint two (2) members nominated by Leipziger Messe GmbH and one (1) member nominated each by M+W, by the General Partner, by Fab 36 Admin and by Fab 36 Holding. Para. 7.7 shall apply mutatis mutandis to the adoption of resolutions by the partners' committee. The members of the partners' committee shall have as many votes as the Partners on the proposal of which they have been appointed (confer para. 7.7 sentence 4 and sentence 5).

8.2 The partners' committee has the following responsibilities which may be extended by resolution of the partners' meeting:

8.2.1 determination of the principles of the business policy including the business and investment plan,

8.2.2 supervision of the management,

8.2.3 [deliberately blank],



---

8.2.4 [\*\*\*].

8.2.5 purchase or sale of participations for a purchase price in excess of [\*\*\*] million,

8.2.6 joint ventures if and when the planned annual turnover of the joint venture exceeds [\*\*\*] million,

8.2.7 conclusion of new agreements with group companies or holding companies of the AMD Group if and to the extent that they exceed sales of [\*\*\*] million per annum in the individual case and are not listed in the Fab 36 business plan as well as agreements with respect to the grant of loans (of any kind whatsoever) by the Partnership to group or holding companies of the AMD Group. Irrespective of any fault, the AMD Partners warrant by means of an independent promise of warranty pursuant to Section 311 para. 1 German Civil Code that no such agreement has been concluded before the effectiveness of this Limited Partnership Agreement except the contracts attached to the Cooperation Agreement as Appendices.

8.2.8 modifications of the AMD Fab 36 Cost Plus Reimbursement Agreement if the rights or the economic situation of the limited partners Leipziger Messe GmbH and M+W are not insignificantly adversely affected thereby, as well as ordinary termination of the Fab 36 Cost Plus Reimbursement Agreement by the Partnership. The exclusion of the costs incurred by AMD Fab 36 for the services provided by AMD Inc. or AMD Saxony under the Fab 36 Management Service Agreement or pursuant to Section III of the AMD Fab 36 Cost Plus Reimbursement Agreement from the 10% cost markup (and 100% reimbursement in lieu thereof) is not deemed to significantly adversely affect the rights or the economic situation of the limited partners Leipziger Messe GmbH and M+W.

---

**\*\*\*** *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004.*

---

8.2.9 modifications of the Management Service Agreement, the License Agreement and/or the Syndicated Loan Agreement as well as termination of the Syndicated Loan Agreement by the Partnership if the rights or the economic situation of the limited partners Leipziger Messe GmbH and M+W are considerably adversely affected by such modification and/or termination of any of the aforesaid Agreements; exercise of an option for extension or early repayment of the Syndicated Loan Agreement or exercise of options under the Syndicated Loan Agreement which are comparable with the aforesaid options if and when the rights or the economic situation of the limited partners Leipziger Messe GmbH and M+W are adversely affected by the exercise of such option.

8.2.10 decisions in the other matters determined in the rules of procedure.

8.3 The resolutions of the partners' committee concerning the following areas of responsibility require a unanimous vote:

8.3.1 in case of a decision pursuant to para. [\*\*\*],

8.3.2 in case of a decision pursuant to para. [\*\*\*].

8.3.3 in case of a decision pursuant to para. [\*\*\*],

8.3.4 in case of decisions pursuant to paragraphs [\*\*\*] and [\*\*\*].

8.4 In case of para. [\*\*\*], the resolutions of the partners' committee shall be adopted by a majority of [\*\*\*] of the votes.

8.5 Section 90 AktG [German Stock Corporation Act] applies to the reporting of the management to the partners' committee.

#### Article 9 ANNUAL FINANCIAL STATEMENTS AND APPROPRIATION OF THE PROFIT/LOSS

9.1 The business year is the calendar year.

---

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004.*

---

9.2 Within the period required by law, but not later than within the first three (3) months after the end of the business year, the General Partner shall prepare the annual financial statements according to the German Commercial Code, in compliance with the statutory classification and valuation regulations and observing the tax provisions relating to the determination of profits, and submit the same to the auditor for audit.

9.3 The auditor shall also examine compliance with the terms of the Cooperation Agreement, this Limited Partnership Agreement, the Silent Partnership Agreement and the terms of the AMD Fab 36 Cost Plus Reimbursement Agreement attached to the Cooperation Agreement as an Appendix and, as far as required pursuant to Section 53 HGrG [German Act relative to Basic Budgetary Rules], of the Fab 36 Management Service Agreement, and shall prepare a supplementary report thereon in accordance with Section 53 HGrG. Irrespective thereof, every Partner shall be entitled, at any time, at its own cost and expense, to instruct a certified public accountant or a firm of certified public accountants authorized to practice in the Federal Republic of Germany to examine compliance with the terms of the AMD Fab 36 Cost Plus Reimbursement Agreement. If the auditor establishes that the remuneration pursuant to Section 2.1 of the Fab 36 Management Service Agreement is unreasonable, the parties to the Fab 36 Management Service Agreement are to renegotiate the remuneration. In the event that no agreement is reached, the Partners shall be entitled to institute arbitration proceedings pursuant to Article 18.

9.4 The annual financial statements along with the audit report and the supplementary report as well as the auditor's certificate shall, promptly but not later than five (5) months after the end of the respective business year, be submitted to the Partners together with the General Partner's proposal for the appropriation of the profit/loss.

9.5 Unless otherwise agreed hereinafter, the Partners shall participate in the profit determined according to the German Commercial Code in the proportion of their accounts pursuant to para. 4.2 (including contribution account III); the AMD Limited Partners only shall participate in any loss amongst them in the proportion of their accounts pursuant to para. 4.2:

9.5.1 A loss shall be debited to the loss carryover account and a profit shall be credited to the current account, unless any other appropriation of the profit is decided by the partners' meeting by resolution pursuant to Section 9.5.3.

---

9.5.2 If the loss carryover accounts show a loss carryover, the profit shares attributable to the AMD Limited Partners for the following years shall first of all be credited to the loss carryover accounts of the AMD Limited Partners.

9.5.3 The partners' meeting may decide by unanimous resolution (para. 7.8.5) that the net income for the year/profit shares of Leipziger Messe GmbH and of M+W be credited to the profit reserve accounts in whole or in part. Irrespective thereof, the profit shares of Leipziger Messe GmbH and of M+W according to Section 9.5.4 for the business years ending on 12/31/2006 or later shall be attributed to the current accounts at the end of the relevant business year as far as permissible under the Syndicated Loan Agreement. The profit shares of Leipziger Messe GmbH and of M+W for the business years ending on 12/31/2005 or earlier shall be attributed to the respective profit netting accounts of such Partners at the end of the relevant business year. The balance of the profit netting accounts of Leipziger Messe GmbH and of M+W as per 12/31/2006 shall be credited to the current accounts of these two Partners as of 12/31/2006 as far as permissible under the Syndicated Loan Agreement.

9.5.4 The profit shares of Leipziger Messe GmbH and of M+W amount to at least 11 % per annum of the aggregate amount of their paid in limited partners' contributions I and II, regardless of whether or not a distributable profit is realized and regardless of the amount of any such profit. The profit shares of Leipziger Messe GmbH and of M+W amount to no more than 13 % per annum, again related to the aggregate amount of their paid in limited partners' contributions I and II. The profit share amounts to [\*\*\*] per annum for each month in which [\*\*\*] Wafer outs per month are achieved at Fab 36 and [\*\*\*] per annum for each month in which over [\*\*\*] Wafer outs per month are achieved, otherwise [\*\*\*] p.a.

9.5.5 If and to the extent that the profit of the Partnership is insufficient to cover the profit shares pursuant to para. 9.5.4 - and in case of a loss - -, the respective amount shall be debited to the loss carryover accounts of the AMD Limited Partners among them in the proportion of their accounts pursuant to para. 4.2.

9.5.6 If and to the extent that profits exceed the profit claims of Leipziger Messe GmbH and of M+W pursuant to para. 9.5.4, such profits shall be due to the AMD Limited Partners in the proportion of their accounts pursuant to para. 4.2.

---

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .*

---

9.6 The limited partners shall not be obligated to provide additional funds, even in case of liquidation. Section 171 (1) HGB remains unaffected.

9.7 Withdrawals may be made only up to an amount equal to the credit balance on the current account and – within the scope of Section 3.7 Sentence 2 – up to an amount equal to the credit balance on the contribution account III without a separate partner resolution (or according to the Partner Resolution pursuant to Section 3.7 Sentence 3, respectively) being required. Irrespective thereof, the AMD Limited Partners may withdraw sums equal to the taxes on income attributable to their interest in the Partnership without a separate partner resolution being required.

Article 10 **DISPOSITION OF SHARES, OPTIONS**

10.1 If a limited partner intends to transfer its limited partner's interest to a company which is affiliated with such limited partner within the meaning of Section 15 AktG [German Stock Corporation Act], the other limited partners must give their consent if and when the following conditions are fulfilled:

10.1.1 The acquiring company must accede to all agreements concluded by and between the Partners in connection with the participation.

10.1.2 It must be ensured that the limited partner's interest will be transferred back to the transferring Partner if and when the acquiring company ceases to be a company affiliated with the transferring Partner within the meaning of Section 15 AktG or the acquiring company engages in the design, development, production or distribution of semiconductor products, directly or indirectly (hereinafter "**Competing Entity**"). Companies of the AMD Group are not deemed to be such Competing Entity.

10.1.3 Furthermore, in case of Leipziger Messe GmbH, Leipziger Messe GmbH or the Free State of Saxony must, directly or indirectly, hold an interest in excess of 50% in the acquiring company and such acquiring company may not hold a majority interest in an other company, which is directly or indirectly engaged in the design, the development, the production or the distribution of semiconductor products, and has no such company as direct or indirect partner/shareholder.

10.2 If and to the extent that Leipziger Messe GmbH and/or M+W are outvoted by the AMD Partners in the partners' meeting or in the partners' committee in any of the matters specified in para. 10.2.1 through and including para. 10.2.4 hereinafter, the outvoted Partner shall be entitled to offer all of its limited partner's interests to the AMD

---

Limited Partners for purchase. If the outvoted Partner exercises its rights, the AMD Limited Partners shall be obligated to purchase themselves, or to cause one or two or more third parties of their choice to purchase, all limited partner's interests from such Partner; in the latter case, no consent of the partners' meeting shall be required for the sale and the transfer of the limited partner's interest(s) to the third party/third parties:

10.2.1 increase of the Capital Accounts pursuant to para. 4.2, except increase of the Capital Accounts of the AMD Partners by way of cash contribution, provided that, in deviation from para. 7.7, sentence 4, first half-sentence, the increased capital shall carry no voting right,

10.2.2 consent to the disposition of shares of the AMD Partners in the Partnership if and to the extent that there is good cause conflicting with such disposition, except in the cases specified in para. 10.1, and consent to admission of partners, if and to the extent there is good cause to reject such admission,

10.2.3 investments insofar as the investment volume according to the applicable business plan is exceeded significantly, i.e. by more than [\*\*\*] million per annum, or more than [\*\*\*] million in total, unless such investments are financed through own or borrowed funds of companies of the AMD Group. Excluded herefrom are investments brought forward or delayed within the context of the business plan,

10.2.4 reduction of the share of the AMD Partners in the Partnership below 50 % or termination of the operative management (Section 17 AktG) by the AMD Partners.

10.3 The put option pursuant to para. 10.2 may be exercised by notice in writing to the AMD Limited Partners within two (2) weeks from adoption of the resolution by the partners' meeting, and must be notified to the Partnership. In such case, every AMD-Limited Partner shall be entitled to require within four (4) weeks from receipt of the put option that the adoption of the resolution concerned be repeated at a new partners' meeting. If the originally outvoted Partner and the AMD Limited Partners vote in the same way at such meeting, the put option shall thereupon terminate

10.4 In the event that the put option pursuant to para. 10.2 is exercised, the purchase price shall be determined pursuant to para. 10.5.2.

---

**\*\*\* Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .**

---

10.5 Leipziger Messe GmbH and M+W shall be entitled to sell their limited partner's interests to third parties (subject to paragraph 10.5.1) except Competing Entities or to offer them to the AMD Limited Partners (put option) five (5) years after the date when they completely paid in their limited partners' contributions I and II (para. 3.3) and their silent partner's contribution under the Silent Partnership Agreement. Leipziger Messe GmbH and M+W shall thereafter have the same right every three (3) years. Exercise of the put option must be declared not later than one (1) year before the date on which it is to take effect. In the event that the put option is exercised, the AMD Limited Partners undertake to acquire the limited partner's interests of Leipziger Messe GmbH and/or of M+W or to designate one or two or more third parties which acquire such limited partner's interests; in the latter case, no consent of the partners' meeting shall be required for the sale and the transfer of the limited partner's interest(s) to the third party/third parties. Upon first exercise of the put option pursuant to sentence 1, Leipziger Messe GmbH shall also be entitled to offer only one sixth of its limited partner's interest in lieu of the total limited partner's interest; the claim for consideration shall accordingly be reduced in the same proportion.

10.5.1 Leipziger Messe GmbH and M+W grant the AMD Limited Partners a right of first refusal for their shares and shall transmit a written duplicate original of the agreement of purchase and sale to the AMD Limited Partners. Leipziger Messe GmbH and/or M+W must be notified in writing of the exercise of the right of first refusal within two (2) months from knowledge of the agreement of purchase and sale. The AMD Limited Partners may also designate one or two or more third parties as purchaser(s); in the latter case, no consent of the partners' meeting shall be required for the sale and the transfer of the limited partner's interest(s) to the third party/third parties.

10.5.2 In the event that the put option is exercised, the purchase price will result from the balance on the Capital Accounts, the contribution account III, the profit netting account and the profit reserve account. The price payable by the AMD Limited Partners in case of exercise of the right of first refusal will result from the agreement between Leipziger Messe GmbH, and/or M+W on the one hand and the third party on the other hand, but shall not exceed the purchase price determined in sentence 1 (limited right of first refusal). Any claims and liabilities vis-à-vis the Partnership from the current account (para. 4.3) shall remain unaffected and will become due and payable at the effective date of the withdrawal at the latest.

10.6 The AMD Limited Partners shall be entitled to request to purchase from Leipziger Messe GmbH and/or M+W their limited partner's interests (call option) 3.5 years after the date on which they have fully paid in their respective limited partners'

---

contributions I and II (Section 3.3). The AMD Limited Partners shall thereafter have the same right every three (3) years. The exercise of the call option may be declared no earlier than one (1) year and no later than four (4) weeks before the date on which it is to take effect. In case of exercise of the call option, Leipziger Messe GmbH and M+W undertake to sell their limited partner's interests to the AMD Limited Partners or to the third party/third parties designated by the AMD Limited Partners; in the latter case, no consent of the partners' meeting shall be required for the sale and the transfer of the limited partner's interest(s) to the third party/third parties. In the event that the call option is exercised, the purchase price shall be in accordance with the regulation in para. 10.5.2 sentence 1 plus an amount of € 3.5 million for Leipziger Messe GmbH and of € 2.1 million for M+W.

10.7 If the AMD Fab 36 Cost Plus Reimbursement Agreement terminates pursuant to Article V para. 1 (b) thereof or otherwise on the basis of termination for good cause, Leipziger Messe GmbH and M+W shall be entitled, optionally individually or jointly, to offer all of their limited partner's interests to the AMD Limited Partners for purchase. In this case, the AMD Limited Partners shall be obligated to purchase from Leipziger Messe GmbH and/or M+W all limited partner's interests or cause such purchase by one or more third parties designated by the AMD Limited Partners with no consent of the partners' meeting being required in the latter case for the sale and transfer of the limited partner's interest(s) to the third party or the third parties. The amount of the purchase price shall be determined pursuant to para. 10.5.2 sentence 1 of this Limited Partnership Agreement.

10.8 Insofar as Leipziger Messe GmbH or M+W holds a direct or indirect majority share in a Competing Entity, the other Partners shall have the right, in proportion to their interests, to require from such Partner the transfer of its shareholding in AMD Fab 36 to it or to a third party (acquisition right) with no consent of the partners' meeting being required in the latter case for the sale and transfer of the limited partner's interest(s) to the third party or the third parties. In the event that the acquisition right is exercised, the provisions on compensation under para. 10.5.2 sentence 1 shall apply. If one or more Partners do not exercise this acquisition right, the acquisition right shall accrue to the Partner(s) who exercise(s) the acquisition right. In addition, the Partners with direct or indirect interests in a Competing Entity are strictly prohibited from disclosing to the Competing Entity technical information, including information regarding the technology to manufacture Wafers.

10.9 In all cases in which the AMD Partners are entitled and/or obligated hereunder to acquire limited partner's interests from other Partners, the AMD Limited



---

Partners may also opt for withdrawal of the Partner concerned and accrual of such Partner's limited partner's interest to the remaining Partners; in this case, the same conditions apply as in case of purchase of the limited partner's interest. Withdrawal and accrual shall be subject to the condition precedent that the compensation is paid within twenty (20) calendar days from the withdrawal date. The AMD Partners shall be liable for the claims of the withdrawing Partner besides the Partnership. In addition, AMD, Inc. shall be entitled, in all cases referred to in sentence 1, to directly acquire the relevant limited partner's interests (genuine contract in favor of a third party).

10.10 The interests may not be encumbered and, in particular, no pledging, usufruct, granting of subinterests or a legal position by which a Partner holds a fiduciary position, shall be permissible without approving partner resolution pursuant to para. 7.1.6. The same applies to the transfer and encumbering of rights and/or duties hereunder, except payment claims of a Partner and except rights and duties of the AMD Partners and of AMD Inc. in connection with rights of first refusal, put options, call options and acquisition rights and duties regarding shares. Pledging of shares, in whole or in part, (including realization, in particular, by way of public auction) to secure a loan raised for the purpose of effecting the limited partner's contribution, acquiring the limited partner's interest or for funding the Partnership shall be permissible without special consent of the partners' meeting; this applies to any pledging by Leipziger Messe GmbH and M+W with the proviso that the pledge contract is concluded only subject to the condition subsequent of acquisition of the interests concerned after payment of the purchase price as a result of exercise of any of the acquisitions rights, call options, put options and rights of first refusal specified in Article 10. Likewise, no consent of the partners' meeting shall be required for the transfer of the partner's interests of Leipziger Messe GmbH, of M+W and the Second General Partner to Dresdner Bank AG in case of realization of security interests in the partnership interests of the AMD Limited Partners created in favor of the lenders within the meaning of the Syndicated Loan Agreement.

10.11 Notwithstanding the regulations in Article 10, any disposition of shares shall be permissible only to the extent not conflicting with the obligations under the Federal/State Guaranty Decision (as amended).

#### Article 10a **SPECIAL AGREEMENTS CONCERNING THE SECOND GENERAL PARTNER**

10.a.1. The Second General Partner undertakes, upon request of Fab 36 Holding, at any time, to assign its interest in the Partnership to a natural person or to a company which is subject to German company law as designated by Fab 36 Holding. Such assignment shall be without consideration.

---

10a.2 The Partners, here and now, agree to such assignment in advance.

10a.3 The Second General Partner hereby authorizes Fab 36 Holding to fully represent the Second General Partner within the framework of the assignment of the interest in the Partnership with Fab 36 Holding being exempted from the restrictions of Section 181 BGB.

10a.4 All Partners undertake, immediately after conclusion of this Limited Partnership Agreement, to confer on Fab 36 Holding an irrevocable notarized authority to notify the withdrawal of the Second General Partner from the Partnership and the entry of the party acquiring the partnership interest of the Second General Partner in the Partnership to the Commercial Register.

**Article 11 TERM AND TERMINATION**

11.1 The Partnership is established for an indefinite period of time. This Limited Partnership Agreement and thus accession by Leipziger Messe GmbH and by M+W shall only take effect upon entry of Leipziger Messe GmbH and M+W as limited partners in the Commercial Register.

11.2 Every Partner may terminate the Partnership by giving notice to the other Partners by registered letter with return receipt subject to twelve (12) months' notice with the termination being effective at the end of a business year, the first time as of 31 December 2015. The date of mailing of the notice letter shall be decisive for establishing observance of the notice period. The right to give notice of early termination for good cause shall remain unaffected.

11.3 The terminating Partner shall withdraw from the Partnership. The Partnership shall be continued by the other Partners.

11.4 Each personally liable partner shall withdraw from the Partnership upon its dissolution. The limited partners shall be obligated, unless Article 12 applies, in time before the withdrawal takes effect, to form a legal person with respective articles of association and to accept the same as personally liable partner or to accept one or two or more limited partners as personally liable partner. Failing this within one (1) month from withdrawal of both personally liable partners and if Article 12 does not apply, the Partnership is deemed dissolved unless a natural and/or domestic legal person is personally liable partner in addition to the withdrawing personally liable partners.

---

Article 12 **EXPULSION OF A PARTNER / COMPULSORY ASSIGNMENT**

12.1 The partners' meeting may decide by resolution to expel a Partner or to transfer its share to the other Partners in the proportion of their capital shares or to a third party if and when there is good cause therefor within the meaning of Section 133 HGB; the Partner concerned has no voting right in this case.

12.2 There is good cause, in particular, if and when

12.2.1 bankruptcy proceedings are opened against the assets of a Partner or the institution of such proceedings is rejected for lack of assets,

12.2.2 execution is levied against the share of a Partner and such levy of execution is not set aside within one (1) month from commencement thereof, at the latest by the time when the limited partner's interest is realized,

12.2.3 a Partner violates a material obligation resulting from the shareholding and fails to discontinue such violation despite a warning,

12.2.4 a Partner tries to sell its share (in whole or in part) without the consent of the Partnership required pursuant to para. 7.1.6,

12.2.5 a Partner gives notice of termination of this Limited Partnership Agreement or files an action for dissolution.

12.3 The voting right of the Partner concerned shall, as far as legally permissible, be suspended from the date of the partner resolution directing the redemption or the (compulsory) transfer of the share.

12.4 In addition to the events provided by law (Section 131 (3) HGB), AMD Fab 36 LLC shall withdraw from the Partnership without a specific partner resolution if

12.4.1 a ground for termination according to Section 21 of the Syndicated Loan Agreement entered into between the Partnership, Dresdner Bank AG and the other lenders dated as of 21 April 2004, as amended ("Syndicated Loan Agreement") exists and the Syndicated Loan Agreement has been terminated by the lenders (the "Banks" within the meaning of the Syndicated Loan Agreement of 21 April 2004); or

---

12.4.2 proceedings have been applied for or instituted in respect of AMD Inc. or AMD Fab 36 LLC:

(a) seeking (i) to have an order for relief entered or seeking (ii) the declaration that AMD Inc. or AMD Fab 36 LLC is bankrupt or seeking (iii) dissolution, winding-up, rescission of the Limited Partnership Agreement or declaration that the Limited Partnership Agreement is invalid, terminated or no longer applicable, liquidation, restructuring, conclusion of a settlement agreement or similar relief with respect to AMD Inc. or AMD Fab 36 LLC, its property or its assets or liabilities under any law relating to bankruptcy, insolvency, composition, debt discharge, protection of creditors, termination or dissolution of legal entities or any other similar law now or hereafter in effect; or

(b) seeking appointment of a receiver, liquidator, trustee or (other) fiduciary or other sequestrator for all (or substantially all) of the property of AMD Inc. or of AMD Fab 36 LLC in non-bankruptcy proceedings which result in the registration or the approval of registration of such appointment;

(c) and which in either of (a) or (b) above are not dismissed within sixty (60) days of the commencement of such proceedings or such appointment; or

12.4.3 AMD Inc. or AMD Fab 36 LLC voluntarily suspends transaction of business; stops payments; makes a general assignment for the benefit of its creditors (unless these are identical with the lending banks of the Partnership under the Syndicated Loan Agreement or such banks agree to the assignment); applies for or institutes any of the proceedings described in para. 12.4.2 hereof, or consents to or acquiesces in any relief, declaration, finding or any other measure within the meaning of para. 12.4.2 (whether or not any such proceedings have been applied for or instituted); or consents to or acquiesces in the taking possession of all or substantially all of its property by a trustee within the meaning of para. 12.4.2; or causes itself its dissolution or winding up, or, without the consent of the aforesaid lending banks, rescinds its articles of incorporation (or any other incorporation document) or declares the same invalid, terminated or no longer applicable, or liquidates itself or a substantial part of its property; or takes any corporate or similar action in furtherance of any of the foregoing, without the approval of the aforesaid lending banks, or

---

12.4.4 execution is levied against the share of AMD Fab 36 LLC in the Partnership or against the share of AMD Inc. in AMD Fab 36 LLC by third parties other than the lending banks within the meaning of para. 12.4.3 and such execution is not stayed within two (2) months from a request to AMD Fab 36 LLC and/or to AMD Inc., at the latest on or before realization of the share.

12.5 If and to the extent that the withdrawal of AMD Fab 36 LLC in any of the events referred to in para. 12.4 above - for any reason whatsoever - has not been validly agreed upon, AMD Fab 36 LLC shall, at any rate, lose all voting, management and representation rights upon occurrence of the circumstances referred to in para. 12.4.1 through 12.4.4.

12.6 Upon occurrence of any of the circumstances referred to in Article para.12.4.1 through 12.4.4, the position of Fab 36 Admin will change to that of a personally liable partner which will then hold all management and representation rights held by AMD Fab 36 LLC until such point in time. As from such date, Fab 36 Admin will have the votes of the General Partner specified in para. 7.7.

12.7 Following the withdrawal of AMD Fab 36 LLC, the Partnership will be continued by the remaining Partners as a limited partnership with Fab 36 Admin as further general partner.

12.8 Para. 12.4 shall apply also if the Partnership is in the process of liquidation.

12.9 In addition to the events provided by law (Section 131 (3) HGB), Fab 36 Holding shall withdraw from the Partnership if and when the opening of bankruptcy or similar proceedings against its assets is rejected for lack of assets. This shall apply also if the Partnership is in the process of liquidation. The Partnership will be continued by the remaining Partners.

12.10 If bankruptcy or similar proceedings are opened against the assets of Fab 36 Admin or the opening of such proceedings is rejected for lack of assets, or if the Partnership is terminated by Fab 36 Admin or by a creditor of Fab 36 Admin, Fab 36 Admin will not withdraw from the Partnership, notwithstanding Section 131 (3) HGB. The Partnership will be dissolved (liquidating phase) and be continued as a liquidation partnership until its termination.

12.11 The Partner concerned shall withdraw from the Partnership immediately upon occurrence of any of the grounds for withdrawal referred to in this clause 12.

---

12.12 Expulsion of Fab 36 Admin or compulsory transfer of its limited partner's interest to another Partner shall be permissible only after a third party will have joined the Partnership as general partner or as limited partner. Such party must be a shelve company acquired by Fab 36 Holding from a known provider of shelve companies. The same applies to the compulsory transfer of the share of Fab 36 Admin to a third party.

**Article 13 COMPENSATION**

A compensation shall be paid to the Partner in all cases of withdrawal pursuant to para. 11.2 in connection with 11.3 and pursuant to Article 12. The compensation shall be determined in analogous application of para. 10.5.2 sentence 1.

**Article 14 LIQUIDATION**

14.1 The Partnership will be liquidated by the General Partner as liquidator after dissolution of the Partnership.

14.2 The liquidation proceeds remaining after satisfaction of the creditors shall first of all be used to repay any credit balance on the contribution account III to the Partner concerned. The proceeds remaining thereafter shall be due in priority to Leipziger Messe GmbH and M+W, among them in the proportion of their compensation claims pursuant to Article 13, up to an amount equal to the claims pursuant to Article 13 and thereafter to the AMD Limited Partners. The same applies mutatis mutandis in case of final distribution of the surplus in the event of bankruptcy of the Partnership pursuant to Section 199 InsO [German Bankruptcy Code].

**Article 15 AUTHORITY FOR THE COMMERCIAL REGISTER**

Every Partner except Fab 36 Holding shall be obligated to confer a notarially authenticated authority on Fab 36 Holding to represent the respective partner vis-à-vis the commercial register in matters concerning the Partnership, except the application for registration of its withdrawal from the Partnership or, in case of the limited partners, of a change in its limited partner's interest.

---

#### Article 16 **NOTIFICATIONS**

The notifications of the Partnership shall be made in the Federal Gazette [Bundesanzeiger].

#### Article 17 **PARTIAL INVALIDITY AND AMENDMENTS**

17.1 If any provision of this Agreement or a provision inserted in this Agreement in the future is or will be invalid or unenforceable, in whole or in part, or if this Agreement contains a gap, this shall not affect the validity of the remaining provisions hereof. In lieu of the invalid or unenforceable provision or to fill the gap, a reasonable regulation shall apply which, as far as legally permissible, most nearly achieves what has been intended by the contract parties or what they would have intended according to the purpose and the meaning of this Agreement if they had considered the issue.

If the invalidity or unenforceability of a provision is due to a specific extent of performance or a specific time (deadline or date) fixed therein, the legally permissible extent or time which comes closest to the provision shall be deemed stipulated.

17.2 All agreements concerning the shareholding as between and among the Partners or as between the Partnership and the Partners shall be valid only if in writing, unless a partner resolution or notarial recording is required. This applies also to a waiver of the requirement of written form.

#### Article 18 **Arbitration Agreement**

18.1 All disputes arising from or in connection with this Agreement or regarding its validity shall be conclusively decided in accordance with the Rules of Arbitration of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) ousting the jurisdiction of the courts of law

18.2 The place of the arbitration proceedings shall be Dresden.

18.3 The number of arbitrators shall be three (3).

18.4 German substantive law shall apply.

---

18.5 The arbitration proceedings shall be conducted in German.

Dresden, 21 April 2004

/s/ Dr. Hans-Raimund Deppe

---

AMD Fab 36 LLC  
Dr. Hans-Raimund Deppe  
Manager

/s/ Dr. Hans-Raimund Deppe

---

AMD Fab 36 Holding GmbH  
Dr. Hans-Raimund Deppe  
Managing Director

/s/ Josef Rahmen /s/ Matthias Rose

---

Leipziger Messe GmbH  
Josef Rahmen, Geschäftsführer  
Matthias Rose, Prokurist

/s/ Matthias Rose

---

LM Beteiligungsgesellschaft mbH  
Matthias Rose  
Managing Director

/s/ Dr. Hans-Raimund Deppe

---

AMD Fab 36 Admin GmbH  
Dr. Hans-Raimund Deppe  
Managing Director

/s/ Authorized Persons

---

Fab 36 BeteiligungsGmbH



**Agreement on the Formation of a Silent Partnership**

by and between

1. AMD Fab 36 Limited Liability Company & Co. KG having its registered office in Dresden, registered in the Commercial Register at the Local Court (*Amtsgericht*) Dresden under HRA 5255, represented by its personally liable partner AMD Fab 36 LLC, which is, in turn, represented by its Manager Dr. Hans-Raimund Deppe, Radebeul, who is entitled to represent on his sole signature,  

- hereinafter referred to as “**AMD Fab 36**” or the “**Owner**” –
  2. Leipziger Messe GmbH, Leipzig, registered under HRB 622 in the Commercial Register kept at the Amtsgericht [Local Court] Leipzig, business address: Messeallee 1, 04356 Leipzig, represented by the Managing Director holding power of joint representation Josef Rahmen and the procurist Matthias Rose,  

- hereinafter referred to as “**Leipziger Messe GmbH**” -
- and
3. Fab 36 BeteiligungsGmbH, Stuttgart, registered under HRB 23351 in the Commercial Register kept at the Amtsgericht Stuttgart, business address: Lotterbergstrasse 30, 70499 Stuttgart,  

- hereinafter referred to as “**M+W**”.

The parties at 2. and 3. hereinafter collectively also referred to as “**Typical Silent Partners**” or “**Silent Partners**”.

---

## PREAMBLE

On November 20, 2003, the Free State of Saxony (“**Free State**”), Advanced Micro Devices, Inc., Sunnyvale/USA (“**AMD**”) and M+W entered into a Cooperation Agreement in order to build a new production facility in Dresden (“**Fab 36**”) for the production of 300 mm silicon wafers on which integrated circuits, in particular, for microprocessors, are fabricated (“**Wafer**”). It is intended to undertake at the new production facility independent research and development to a considerable extent to develop to the industrial production stage semiconductor manufacturing technology, besides the production.

To carry out this project, AMD Fab 36 has been formed. The sole general partner holding power of management and power of representation of AMD FAB 36 is AMD Fab 36 LLC; a further general partner without power of management and power of representation is a company with limited liability the shares in which are held by Leipziger Messe GmbH (LM Beteiligungsgesellschaft mbH). The limited partners of Fab 36 are AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH (AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH hereinafter collectively referred to as the “**AMD –**

**Limited Partners**”) as well as Leipziger Messe GmbH and M+W.

The AMD Fab 36 Limited Partnership Agreement is attached hereto as **Appendix 1** as an integral part of this Agreement. For the purpose of funding AMD Fab 36, the limited partners Leipziger Messe GmbH and M+W wish to participate in AMD Fab 36 also as Typical Silent Partners. To this end, they enter into this Agreement on the Formation of a Typical Silent Partnership with the Owner (“**Silent Partnership**”).

## Article 1 **FORMATION**

- 1.1 The corporate purpose of the Owner is the development of semiconductor technology to the industrial production stage and the production of microelectronic components on Wafers initially in the range of 65 nm, later on also in the range of 45 nm technology generations with the possibility of even smaller sized structures in Dresden.

- 1.2 Leipziger Messe GmbH and M+W will each participate in the Owner's commercial undertaking as Typical Silent Partners in accordance with the terms set out hereinafter. It is hereby specified by the parties that two (2) silent partnerships are involved.

## Article 2 CONTRIBUTIONS

2.1 The Silent Partners shall make the following contributions for exclusive use within the framework of the commercial undertaking:

2.1.1 Leipziger Messe GmbH shall contribute an amount of € 80 million.

2.1.2 M+W shall contribute an amount of € 60 million.

2.2 The contributions shall be made by several installments and be paid to an account of the Owner at Dresdner Bank AG at the following due dates:

2.2.1 Leipziger Messe GmbH shall contribute a first portion (Portion I) of € 30 million, a second portion (Portion II) in an additional amount of € 30 million and a third portion (Portion III) in the amount of € 20 million.

Portion I shall be due and payable five (5) banking days (days on which banks are generally open for business in Frankfurt am Main) after occurrence of milestone LM I specified in Appendix 3.4 to the AMD Fab 36 Limited Partnership Agreement. However, this Portion I shall be due and payable at the earliest after transfer of the title to the real property described in Appendix 3.3 to the AMD Fab 36 Limited Partnership Agreement of AMD Saxony Limited Liability Company & Co. KG ("AMD Saxony") to AMD Fab 36 or, in lieu thereof, after an application for registration of the new owner has been filed and only the issuance of the official record of change [Veränderungsnachweis] by the municipal land surveying office [Vermessungsamt] and conveyance on the basis of such official record of change are still required for the registration of the new owner (in this respect, the application does not need to be sufficient for actual entry). Portion II shall be due and payable five (5) banking days after occurrence of milestone LM II specified in Appendix 3.3 to the AMD Fab 36 Limited Partnership Agreement. Portion III shall be due and payable five (5) banking days after occurrence of milestone LM III specified in Appendix 3.3 to the AMD Fab 36 Limited Partnership Agreement.

---

2.2.2 M+W shall contribute two (2) portions (Portions I and II) in the amount of € 30 million each.

Portion I shall be due and payable five (5) banking days after occurrence of milestone MW I specified in Appendix 3.3 to the AMD Fab 36 Limited Partnership Agreement. However, this Portion I shall be due and payable at the earliest after transfer of the title to the real property described in Appendix 3.4 to the AMD Fab 36 Limited Partnership Agreement of AMD Saxony to AMD Fab 36 or, in lieu thereof, after an application for registration of the new owner has been filed and only the issuance of the official record of change [Veränderungsnachweis] by the municipal land surveying office [Vermessungsamt] and conveyance on the basis of such official record of change are still required for the registration of the new owner (in this respect, the application does not need to be sufficient for actual entry). Portion II shall be due and payable five (5) banking days after occurrence of milestone MW II specified in Appendix 3.3 to the AMD Fab 36 Limited Partnership Agreement.

2.3 The Silent Partners may, by written notice to the respective other parties, waive fulfillment of any or all of the aforesaid preconditions of their contributions becoming due and payable.

#### Article 3 **MANAGEMENT**

The management shall be the right solely of the Owner.

#### Article 4 **PARTNER ACCOUNTS**

4.1 A fixed capital account, a current account, a profit reserve account and a profit netting account shall be kept for the Silent Partners.

4.2 The silent partner's contributions are fixed contributions which are entered in the fixed capital account and which constitute the capital interests of the Silent Partners.

- 
- 4.3 Withdrawable profit claims, withdrawals, interest on such account and other payment transactions between the Silent Partners and the Owner will be entered in the current accounts. The balances on the current accounts are liabilities and/or claims of the Silent Partners and of the Owner. The accounts shall bear interest at a rate of 6.5 % per annum calculated on an equated basis.
  - 4.4 Non-withdrawable profit claims will be entered in the profit reserve accounts. The accounts shall bear interest at a rate of 6.5 % per annum calculated on an equated basis. These accounts do not constitute liabilities of the Owner. However, in the event of liquidation of the Owner, they vest a claim for preferential payment and may be transferred only together with the silent partner's interest.
  - 4.5 The Silent Partners have no share in the losses of the Owner. They are entitled to a profit in accordance with para. 5.5.2.
  - 4.6 The profit claims of the Silent Partners pursuant to para. 5.5.1 sentence 3 shall be entered in the profit netting accounts. They serve for the calculation of the profit claims of the Silent Partners pursuant to para. 5.5.2. The profit claims on these accounts shall bear interest at a rate of 6.5 % per annum calculated on an equated basis.

**Article 5 ANNUAL FINANCIAL STATEMENTS AND APPROPRIATION OF THE PROFIT/LOSS**

- 5.1 The business year is the calendar year.
- 5.2 Within the period required by law, but not later than within the first three (3) months after the end of the business year, the Owner shall prepare the annual financial statements according to the German Commercial Code, in compliance with the statutory classification and valuation regulations and observing the tax provisions relating to the determination of profits, and submit the same to the auditor for audit.
- 5.3 The auditor shall perform its audit in accordance with para. 9.3 of the AMD Fab 36 Limited Partnership Agreement.

- 
- 5.4 The annual financial statements shall be submitted in accordance with para. 9.4 of the AMD Fab 36 Limited Partnership Agreement.
- 5.5 The terms set out hereinafter shall apply to the determination of the profits of the Silent Partners:
- 5.5.1 The profit claims of the Silent Partners pursuant to para. 5.5.2 for the business years ending on 31 December 2006 or later shall be attributed to the current accounts at the end of the relevant business year as far as permissible under the Syndicated Loan Agreement. "**Syndicated Loan Agreement**" means the Loan Agreement dated April 21, 2004 between AMD Fab 36, the Banks, the Facility Agent, the Security Agent and the Reporting Agent (Dresdner Bank AG or its successor in such capacity) as amended from time to time. The profit claims of the Silent Partners for the business years ending on 31 December 2005 or earlier shall be attributed to the respective profit netting accounts of the Silent Partners at the end of the relevant business year. The balance of the profit netting accounts of the Silent Partners as per 31 December 2006 shall be credited to the respective current accounts of the Silent Partners as per 31 December 2006 as far as permissible under the Syndicated Loan Agreement. The Owner shall be entitled to credit the profits of the Silent Partners for the years ending on 12/31/2005 or earlier, in whole or in part, to the current accounts in lieu of the profit netting accounts.
- 5.5.2 The profit claims of the Silent Partners amount to at least 11 % per annum of the aggregate amount of their existing silent partner's interest, regardless of whether or not a distributable profit is realized and regardless of the amount of any such profit. The profit claims of the Silent Partners amount to no more than 13 % per annum, again related to the aggregate amount of their existing silent partner's interest. The profit claim amounts to [\*\*\*] per annum for each month in which [\*\*\*] Wafer outs per month are achieved at Fab 36 and [\*\*\*] per annum for each month in which over [\*\*\*] Wafer outs per month are achieved at Fab 36, otherwise [\*\*\*] per annum.
- 5.5.3 If and to the extent that profits exceed the profit claims of the Silent Partners pursuant to para.5.5.2, such profits shall be retained by the Owner.

---

\*\*\* *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated August 6, 2004 .*

- 
- 5.6 The Silent Partners shall not be obligated to provide additional funds, even in case of liquidation.
- 5.7 Withdrawals may be made only up to an amount equal to the credit balance on the current account.

**Article 6 OTHER RIGHTS AND DUTIES OF THE SILENT PARTNERS**

- 6.1 Each Silent Partner has the rights of control pursuant to Section 233 HGB [German Commercial Code] which it may exercise itself or through a member of the profession of lawyers, certified public accountants or tax advisers who is bound by the professional duty of secrecy.
- 6.2 The Silent Partners shall treat confidentially the existence and the contents of the silent partner's interests in accordance with the confidentiality regulations in Article. 6 of the AMD Fab 36 Limited Partnership Agreement.
- 6.3 The regulations of the Limited Partnership Agreement shall apply mutatis mutandis to the rights to change the material bases of the commercial undertaking and to admit third parties as partners – including as silent partners. The regulations of the AMD Fab 36 Limited Partnership Agreement relating to the transfer of the partnership interest shall apply mutatis mutandis to the transferability of the rights resulting from the Silent Partnership.
- 6.4 The Silent Partners shall be entitled vis-à-vis the Owner to transfer the silent partner's interests or part thereof ((part) interests) to the AMD Limited Partners or a third party to be designated by the AMD Limited Partners to the extent not conflicting with the obligations under the Federal/State Guaranty Decision (as amended).

**Article 7 TERM, TERMINATION AND COMPENSATION**

- 7.1 The respective Silent Partnership shall exist for an indefinite period of time. Each Partner shall have the right to terminate the Silent Partnership by giving notice to the respective other Partner by registered letter with return receipt

---

subject to a notice period of twelve (12) months effective the end of a business year, for the first time effective 31 December 2015. The date on which the notice letter is mailed shall be decisive for establishing observance of the notice period. The right to give notice of early termination for good cause in accordance with the Limited Partnership Agreement shall remain unaffected.

- 7.2 Regardless of the actual value of its silent partner's interest, Leipziger Messe GmbH shall receive an amount of € 80 million in total as compensation for its capital interest (respective partial compensation for part interests).
- 7.3 Regardless of the actual value of its silent partner's interest, M+W shall receive an amount of € 60 million in total as compensation for its capital interest (respective partial compensation for part interests).
- 7.4 The Silent Partners hereby subordinate their claims for payment of compensation and their profit claims to the claims of all other creditors of the Owner which are no subordinated claims.

Article 8 **PARTIAL INVALIDITY AND AMENDMENTS**

- 8.1 If any provision of this Agreement or a provision inserted in this Agreement in the future is or will be invalid or unenforceable, in whole or in part, or if this Agreement contains a gap, this shall not affect the validity of the remaining provisions hereof. In lieu of the invalid or unenforceable provision or to fill the gap, a reasonable regulation shall apply which, as far as legally permissible, most nearly achieves what has been intended by the contract parties or what they would have intended according to the purpose and the meaning of this Agreement if they had considered the issue.
- 8.2 If the invalidity or unenforceability of a provision is due to a specific extent of performance or a specific time (deadline or date) fixed therein, the legally permissible extent or time which comes closest to the provision shall be deemed stipulated.
- 8.3 All agreements concerning the shareholding shall be valid only if in writing, unless a partner resolution or notarial recording is required. This applies also to a waiver of the requirement of written form.



---

Article 9 **Arbitration Agreement**

- 9.1 All disputes arising from or in connection with this Agreement or regarding its validity shall be conclusively decided in accordance with the Rules of Arbitration of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) ousting the jurisdiction of the courts of law.
- 9.2 The place of the arbitration proceedings shall be Dresden.
- 9.3 The number of arbitrators shall be three (3).
- 9.4 German substantive law shall apply.
- 9.5 The arbitration proceedings shall be conducted in German.

Dresden, April 21, 2004

/s/ Dr. Hans-Raimund Deppe

---

/s/ Authorized Persons

---

AMD Fab 36 Limited Liability Company & Co. KG

Leipziger Messe GmbH

/s/ Authorized Persons

---

Fab 36 BeteiligungsGmbH

**Agreement of Purchase and Sale  
of Limited Partner's Interests**

by and between

1. Leipziger Messe GmbH, Leipzig, registered under HRB 622 in the Commercial Register kept at the Amtsgericht [Local Court] Leipzig, business address: Messe-Allee 1, 04356 Leipzig, represented by the Managing Director holding power of joint representation Josef Rahmen and the procurist Matthias Rose,  
- hereinafter referred to as "**Leipziger Messe GmbH**" or "**Seller at 1**" -
2. Fab 36 BeteiligungsGmbH, Stuttgart, registered under HRB 23351 in the Commercial Register kept at the Amtsgericht Stuttgart, business address: Lotterbergstrasse 30, 70499 Stuttgart, represented by a representative authorized by separate power of attorney,  
- hereinafter referred to as "**M+W**" or "**Seller at 2**" -  
- the Seller at 1 and the Seller at 2 hereinafter collectively referred to as the "**Sellers**" -
3. AMD Fab 36 Holding GmbH, registered under HRB 21270 in the Commercial Register kept at the Amtsgericht [Local Court] Dresden, business address: Wilschdorfer Landstraße 101, 01109 Dresden, represented by the Managing Director holding power of sole representation Dr. Hans-Raimund Deppe,  
- hereinafter referred to as "**Fab 36 Holding**" or "**Purchaser at 1**" -
4. AMD Fab 36 Admin GmbH, registered under HRB 22350 in the Commercial Register kept at the Amtsgericht Dresden, business address: Wilschdorfer Landstraße 101, 01109 Dresden, represented by the Managing Director holding power of sole representation Dr. Hans-Raimund Deppe,

- hereinafter referred to as "**Fab X Admin**" or "**Purchaser at 2**" -

- the Purchaser at 1 and the Purchaser at 2 hereinafter collectively referred to as the "**Purchasers**" -

and

5. Advanced Micro Devices, Inc., One AMD Place, Sunnyvale, CA 94088, U.S.A, represented by its Chief Financial Officer Robert J. Rivet

- hereinafter referred to as "**AMD Inc.**" -

#### **RECITALS**

On 20 November 2003, the Free State of Saxony ("**Free State**"), AMD Inc. and M+W entered into a Cooperation Agreement in order to build a new production facility in Dresden for the production of 300 mm silicon wafers on which integrated circuits, in particular, for microprocessors, are fabricated ("**Wafer**"). It is intended to undertake at the new production facility own research and development to a considerable extent to develop to the industrial production stage semiconductor manufacturing technology, besides the production.

To carry out this project, AMD Fab 36 Limited Liability Company & Co. KG ("**AMD Fab 36**") has been formed. The sole general partner holding power of management and power of representation of AMD Fab 36 is AMD Fab 36 LLC; a further general partner without power of management and power of representation is a limited liability company the shares in which are held by Leipziger Messe GmbH (LM Beteiligungsgesellschaft mbH). The limited partners of AMD Fab 36 are AMD Fab 36 Holding and AMD Fab 36 Admin as well as Leipziger Messe GmbH and M+W. The AMD Fab 36 Limited Partnership Agreement a draft of which is attached hereto as **Appendix 1** as an integral part of this Agreement ("**Limited Partnership Agreement**").

The parties to this Agreement (the "**Parties**") intend to lay down the terms for the acquisition of the limited partner's interests of Leipziger Messe GmbH and M+W by the AMD Limited Partners, AMD Inc. or a third party, and they stipulate the following regulation for the exercise of the option right of the Purchasers and AMD Inc. under the Limited Partnership Agreement as well as the following agreement of purchase and sale:

---

I.

Regulation regarding the Option Right as among the Purchasers and AMD Inc.

Article 1

Option Right

- 1.1 The Purchasers are entitled and/or obligated to acquire limited partner's interests of the Sellers according to the Limited Partnership Agreement. Pursuant to Article 10 of the Limited Partnership Agreement they have the right to purchase from the Sellers the limited partner's interests (right of first refusal, call option, acquisition right) and/or they are obligated to purchase the same if and when the Seller(s) effectively exercised the put option of the Sellers pursuant to Article 10 of the Limited Partnership Agreement. Pursuant to Article 10 of the Limited Partnership Agreement, the Purchasers have the option right
  - 1.1.1 to acquire themselves the (partial) limited partner's interest(s) of the Seller(s);
  - 1.1.2 to designate a third party which will acquire the (partial) limited partner's interest(s) in lieu of the Purchasers;
  - 1.1.3 to demand that the selling partner(s) withdraw(s) from the limited partnership with its/their (partial) limited partner's interest(s) accruing to the Purchasers.
- 1.2 Likewise AMD Inc. has the right pursuant to Article 10 of the Limited Partnership Agreement

- 
- 1.2.1 to acquire itself the (partial) limited partner's interest(s) of the Seller(s);
- 1.2.2 to designate a third party which will acquire the (partial) limited partner's interest(s) in lieu of the Purchasers or AMD Inc.
- 1.3 Having regard to the rights of first refusal, acquisition right, put and call options and the option right of the Purchasers and AMD Inc. referred to in paragraphs 1.1 and 1.2, the same agree that the aforesaid rights, except the Sellers' put options, will be exercised exclusively by AMD Inc. The Purchasers hereby authorize AMD Inc. to make any and all declarations of intent, which are required or expedient for the exercise of the option right, vis-à-vis everyone, in particular, vis-à-vis the Sellers; for this authority, the attorney is exempted from the restrictions of Section 181 BGB [German Civil Code] and it may delegate this authority to the extent conferred thereunder.
- 1.4 Unless otherwise provided in the Limited Partnership Agreement, the option right must be exercised within fourteen (14) calendar days from exercise of any of the aforesaid rights of first refusal, acquisition rights, put or call options.

II.

Agreement of Purchase and Sale

Article 1

Object of Purchase

- 1.1 The Seller at 1 holds a capital interest (limited partner's contributions I and II) of € 120 million (in words: onehundredandtwentymillion Euro) in AMD Fab 36, registered under HRA 5255 in the Commercial Register kept at the Amtsgericht Dresden.
- 1.2 The limited partner's interest of the Seller at 1 is fully paid in and – on-balance sheet – not reduced by any losses or withdrawals. The interest is not encumbered with any third party rights and the Seller at 1 may freely dispose of such interest.

- 
- 1.3 The Seller at 2 holds a capital interest (limited partner's contributions I and II) of € 60 million (in words: sixtymillion Euro) in AMD Fab 36, registered under HRA 5255 in the Commercial Register kept at the Amtsgericht Dresden.
  - 1.4 The limited partner's interest of the Seller at 2 is fully paid in and – on-balance sheet – not reduced by any losses or withdrawals. The interest is not encumbered with any third party rights and the Seller at 2 may freely dispose of such interest.

## Article 2

### Sale

- 2.1 The Seller at 1 hereby sells the limited partner's interest referred to in para. 1.1 to the Purchasers. In case that the put option restricted to one sixth of the limited partner's interest (partial limited partner's interest) according to para. 10.5 (at the end) Limited Partnership Agreement is exercised, the provisions of this Agreement relating to the limited partner's interest of the Seller at 1 shall apply, mutatis mutandis, to the partial limited partner's interest without the effectiveness of the agreement of purchase and sale pursuant to sentence 1 on the remaining limited partner's interest being affected.
- 2.2 The Seller at 2 hereby sells the limited partner's interest referred to in para. 1.3 to the Purchasers.
- 2.3 The purchase pursuant to para. 2.1 and para. 2.2 is subject to the condition precedent of effective exercise of a call option, acquisition right, put option or right of first refusal pursuant to Article 10 of the Limited Partnership Agreement.
- 2.4 The purchase pursuant to para. 2.1 and 2.2 is subject to the condition subsequent that, in case of effective exercise of a call option, acquisition right, put option or right of first refusal pursuant to Article 10 of the Limited Partnership Agreement, the Purchasers opt for accrual pursuant to Article 10.9 of the Limited Partnership Agreement.

---

The purchase pursuant to para. 2.1 and 2.2 is subject to the condition subsequent that the Security Agent under the Syndicated Loan Agreement dated 21 April 2004 or a third person named by it effectively exercises the option granted to the Security Agent in the draft Option Agreement attached hereto as Appendix 2, including, in particular, payment of the purchase price.

- 2.5 The portion of the profit/loss for the year attributable to the (partial) limited partner's interest referred to in para. 1.1 for the current business year shall be due to the Seller at 1 and the Purchasers on a pro rata basis. The date at which the condition precedent pursuant to para. 2.3 is fulfilled is decisive for the determination of the portion. The profit share due to the Seller at 1 pursuant to Article 9.5.4 of the Limited Partnership Agreement shall be paid to the Seller at 1 at the time when the purchase price claim becomes due and payable (or proportionately in the event a partial limited partner's interest is sold).
- 2.6 The portion of the profit/loss for the year attributable to the limited partner's interest referred to in para. 1.3 for the current business year shall be due to the Seller at 2 and the Purchasers on a pro rata basis. The date on which the condition precedent pursuant to para. 2.3 is fulfilled is decisive for the determination of the portion. The profit share due to the Seller at 2 pursuant to Article 9.5.4 of the Limited Partnership Agreement shall be paid to the Seller at 2 at the time when the purchase price claim becomes due and payable.

### Article 3

#### Purchase Price

- 3.1 The purchase price of the limited partner's interests pursuant to para. 1.1 and para. 1.3 shall, in accordance with the Limited Partnership Agreement, be determined as follows:
- 3.1.1 In the event of exercise of the put option pursuant to paragraphs 10.2, 10.5 or 10.7 of the Limited Partnership Agreement and in the event of exercise of the acquisition right pursuant to para. 10.8 of the Limited Partnership Agreement, the purchase price shall be determined by the balances on the capital accounts, the contribution account III, the profit netting account and the profit reserve account (or proportionately in the event a partial limited partner's interest is sold);

- 
- 3.1.2 in the event of exercise of the right of first refusal pursuant to para. 10.5.1 of the Limited Partnership Agreement, the regulation in para. 3.1.1 applies unless the purchase price under the agreement of purchase and sale with the third party is lower; in the latter case, the lower purchase price agreed upon with the third party shall apply;
- 3.1.3 in the event of exercise of the call option pursuant to para. 10.6 of the Limited Partnership Agreement, the regulation in para. 3.1.1 plus an amount of € 3.5 million (in words: threemillionfivehundredthousand Euro) for the Seller at 1 and € 2.1 million (in words: twomilliononehundredthousand Euro) for the Seller at 2 applies.
- 3.2 The purchase price shall be due and payable at the time as of which the exercise of the respective call option, acquisition right, put option or right of first refusal in accordance with the terms of Article 10 of the Limited Partnership Agreement is effective.

#### Article 4

##### Assignment

- 4.1 The Seller at 1 hereby assigns to the Purchasers, among them in the proportion of their limited partner's interests, its limited partner's interest pursuant to para. 1.1 and the Purchasers hereby accept such assignment. The assignment is subject to the condition precedent of payment of the full purchase price pursuant to para. 3.1 and shall not take effect before registration of the Purchaser as limited partner by way of succession to specific rights and obligations [Sonderrechtsnachfolge] in the Commercial Register. In addition, the assignment is subject to the condition subsequent that either the Purchasers exercise their option right pursuant to I. para. 1.1.2 or para. 1.1.3 or AMD Inc. exercises its option right pursuant to I. para. 1.2.1 or 1.2.2; in this case, the Seller at 1 hereby authorizes AMD Inc. irrevocably and with exemption from the restrictions of Section 181 BGB [German Civil Code], in the name of the Seller at 1, to offer the assignment of the (partial) limited partner's interest to



---

the purchase contract party designated by the Purchasers and/or by AMD Inc subject to the condition precedent of payment of the full purchase price. This authority may be exercised only if and when such purchase contract party paid the full purchase price within the period of fourteen (14) calendar days as specified in para. 6.2 hereinafter. This authority may also be exercised in the case specified in para. 6.3 hereinafter to offer such assignment to AMD Inc. after payment of the full purchase price by AMD Inc. If AMD Inc. does not exercise the power of attorney, if the third party does not accept the assignment or if the third party does not pay the purchase price, the Seller at 1 assigns to AMD Inc. its (partial) limited partner's interest pursuant to para. 1.1. AMD Inc. hereby accepts such assignment. Also the assignment to AMD Inc. is again subject to the condition precedent of payment of the full purchase price of the (partial) limited partner's interest.

- 4.2 The Seller at 2 hereby assigns to the Purchasers its limited partner's interest pursuant to para. 1.3 and the Purchasers hereby accept such assignment. The assignment is subject to the condition precedent of payment of the full purchase price pursuant to para. 3.1 and shall not take effect before registration of the Purchaser as limited partner by way of succession to specific rights and obligations [Sonderrechtsnachfolge] in the Commercial Register. In addition, the assignment is subject to the condition subsequent that either the Purchasers exercise their option right pursuant to I. para. 1.1.2 or para. 1.1.3 or AMD Inc. exercises its option right pursuant to I. para. 1.2.1 or 1.2.2; in this case, the Seller at 2 hereby authorizes AMD Inc. irrevocably and with exemption from the restrictions of Section 181 BGB [German Civil Code], in the name of the Seller at 2, to offer the assignment of the limited partner's interest to the purchase contract party designated by the Purchasers and/or by AMD Inc subject to the condition precedent of payment of the full purchase price. This authority may be exercised only if and when such purchase contract party paid the full purchase price within the period of fourteen (14) calendar days as specified in Article 6 para. 2 hereinafter. This authority may also be exercised in the case specified in Article 6 para. 3 hereinafter to offer such assignment to AMD Inc. after payment of the full purchase price by AMD Inc. If AMD Inc. does not exercise the power of attorney, if the third party does not accept the assignment or if the third party does not pay the purchase price, the Seller at 2 assigns to AMD Inc. its limited partner's interest pursuant to para. 1.3. AMD Inc. hereby accepts such assignment. Also the assignment to AMD Inc. is again subject to the condition precedent of payment of the full purchase price of the limited partner's interest.

- 
- 4.3 The assignments under para. 4.1, sentence 1, and para. 4.2, sentence 1, are subject to the condition subsequent that the Security Agent under the Syndicated Loan Agreement dated 21 April 2004 or a third person named by it effectively exercises the option granted to the Security Agent in the draft Option Agreement attached hereto as Appendix 2, including, in particular, payment of the purchase price.

Article 5

Representations and Warranties

- 5.1 The Seller at 1 represents and warrants that the limited partner's interest referred to in para. 1.1 has been constituted in a legally effective manner and is not encumbered with any third party rights. The Seller at 1 does not give any other warranty, in particular, no warranty for the value of the sold limited partner's interest.
- 5.2 The Seller at 2 represents and warrants that the limited partner's interest referred to in para. 1.3 has been constituted in a legally effective manner and is not encumbered with any third party rights. The Seller at 2 does not give any other warranty, in particular, no warranty for the value of the sold limited partner's interest.
- 5.3 In the event that the Purchasers, the named third parties or AMD Inc as far as they become a contract party (for purposes of these paragraphs 5.3 and 5.4, "Contract Party"), suffer quantifiable pecuniary disadvantages as a result of any incorrectness or incompleteness of the representations and warranties of the Seller at 1 specified in para. 5.1, the Seller at 1 shall be obligated to compensate the Contract Party for the damage (in priority through restitution in kind). Likewise, the Seller at 2 shall be obligated to compensate the Contract Party for the damage (in priority through restitution in kind) in the event that the Contract Party suffers quantifiable pecuniary disadvantages as a result of any

---

incorrectness or incompleteness of the representations and warranties of the Seller at 2 specified in para. 5.2. The Contract Party shall not have any further or other warranty claims with any substance, of any kind and for any legal ground whatsoever, against the Seller at 1 and/or the Seller at 2. Any damage claims shall become barred by the statute of limitations three (3) years after the date on which the purchase price is due and payable.

- 5.4 In the event that the personal liability of the Sellers for liabilities of the partnership revives as a result of measures of the kind referred to in Section 172 (4) HGB [German Commercial Code], the Contract Party shall release the Sellers from their personal liability regardless of whether such measures have been taken before the transfer (only to the extent based on profit withdrawals under the Limited Partnership Agreement) pursuant to Article 9.5 of the Limited Partnership Agreement or are taken by the Contract Party or its legal successors after such transfer.

#### Article 6

##### Exercise of the Option Right pursuant to I. para. 1

- 6.1 In the event that AMD Inc. exercises the option right pursuant to I. para. 1.2.1, AMD Inc. shall become party to the agreement of purchase and sale of the (partial) limited partner's interest(s) in lieu of the Purchasers (assumption of contract).
- 6.2 However, if AMD Inc. exercises the option right pursuant to I. para. 1.2.2 or the Purchasers exercise the option right pursuant to I. para. 1.1.2, the third party designated by AMD Inc. and/or by the Purchasers shall become party to the agreement of purchase and sale of the (partial) limited partner's interest(s) in lieu of the Purchasers (assumption of contract). AMD Inc. and/or the Purchasers shall insofar act as falsus procurator [vollmachtloser Vertreter] of the third party. In this case, the full purchase price of the (partial) limited partner's interest(s) covered by the agreement of purchase and sale shall be payable and the approval of the third party shall be submitted within fourteen (14) calendar days after exercising the option right pursuant to para. 6.1 above.

- 
- 6.3 The assumption of contract pursuant to the preceding para. 6.2. sentence 1 shall be subject to the conditions subsequent that the purchase price pursuant to the preceding para. 6.2, sentence 3 has not been paid in full during the period of fourteen (14) calendar days after exercising the option right pursuant to para. 6.1 above, the approval of the third party has not been submitted within such period or AMD Inc. does not exercise the power of attorney for offering the limited partner's interests pursuant to para. 4.1 or 4.2. Upon occurrence of any of these resolatory conditions AMD Inc. shall become party to the agreement of purchase and sale in lieu of the Purchasers and/or the third parties (assumption of contract).

Article 7

Cost of Application for Registration in the Commercial Register

The cost of application for registration in the Commercial Register shall be borne by the Purchasers.

III.

General

Article 1

Partial Invalidity

- 1.1 If any provision of this Agreement or a provision inserted in this Agreement in the future is or will be invalid or unenforceable, in whole or in part, or if this Agreement contains a gap, this shall not affect the validity of the remaining provisions hereof. In lieu of the invalid or unenforceable provision or to fill the gap, a reasonable regulation shall apply which, as far as legally permissible, most nearly achieves what has been intended by the contract parties or what they would have intended according to the purpose and the meaning of this Agreement if they had considered the issue.

1.2 If the invalidity or unenforceability of a provision is due to a specific extent of performance or a specific time (deadline or date) fixed therein, the legally permissible extent or time which comes closest to the provision shall be deemed stipulated.

Article 2

Written Form

Modifications of or supplements to this Agreement shall be valid only if in writing. This applies also to a waiver of the requirement of written form.

Article 3

Applicable Law

This Agreement shall be governed by the laws of the Federal Republic of Germany.

Article 4

Coming into Effect of the Agreement

This Agreement takes effect upon entry of Leipziger Messe GmbH and of M+W in the Commercial Register as limited partner of AMD Fab 36 Limited Liability Company & Co. KG.

Dresden, 21 April 2004

/s/ Robert J. Rivet

\_\_\_\_\_  
(Advanced Micro Devices, Inc.)

/s/ Hans-Raimund Deppe

\_\_\_\_\_  
(AMD Fab 36 Admin GmbH)

/s/ Authorized Persons

\_\_\_\_\_  
(Fab 36 BeteiligungsGmbH)

/s/ Hans-Raimund Deppe

\_\_\_\_\_  
(AMD Fab 36 Holding GmbH)

/s/ Josef Rahmen /s/ Matthias Rose

\_\_\_\_\_  
(Leipziger Messe GmbH)

**Agreement of Purchase and Sale  
of Silent Partner's Interests**

by and between

1. Advanced Micro Devices, Inc., One AMD Place, Sunnyvale, CA 94088, U.S.A, represented by its Chief Financial Officer Robert J. Rivet  
- hereinafter referred to as "**AMD Inc.**" -
2. Leipziger Messe GmbH, Leipzig, registered under HRB 622 in the Commercial Register kept at the Amtsgericht Leipzig, business address: Messe-Allee 1, 04356 Leipzig, represented by the Managing Director holding power of joint representation Josef Rahmen and the procurist Matthias Rose,  
- hereinafter referred to as "**Leipziger Messe GmbH**" -
3. Fab 36 BeteiligungsGmbH, Stuttgart, registered under HRB 23351 in the Commercial Register kept at the Amtsgericht Stuttgart, business address: Lotterbergstrasse 30, 70499 Stuttgart, represented by a representative authorized by separate power of attorney,  
- hereinafter referred to as "**M+W**" -
4. AMD Fab 36 Holding GmbH, registered under HRB 21270 in the Commercial Register kept at the Amtsgericht [Local Court] Dresden, business address: Wilschdorfer Landstraße 101, 01109 Dresden, represented by the Managing Director holding power of sole representation Dr. Hans-Raimund Deppe,  
- hereinafter referred to as "**Fab 36 Holding**" -

5. AMD Fab 36 Admin GmbH, registered under HRB 22350 in the Commercial Register kept at the Amtsgericht Dresden, business address: Wilschdorfer Landstraße 101, 01109 Dresden, represented by the Managing Director holding power of sole representation Dr. Hans-Raimund Deppe,

- hereinafter referred to as "**Fab 36 Admin**" -

- Fab 36 Holding and Fab 36 Admin hereinafter together referred to as "**Purchasers**" -

and

6. AMD Fab 36 Limited Liability Company & Co. KG, registered under HRA 5255 in the Commercial Register kept at the Amtsgericht Dresden, business address: Wilschdorfer Landstr. 101, 01109 Dresden, represented by its personally liable partner AMD Fab 36 LLC, which is in turn represented by its Manager Dr. Hans-Raimund Deppe, Radebeul, who is entitled to represent on his sole signature,

- hereinafter referred to as "**AMD Fab 36**" -

#### RECITALS

On November 20, 2003, the Free State of Saxony ("**Free State**"), AMD Inc. and M+W entered into a Cooperation Agreement in order to build a new production facility in Dresden for the production of 300 mm silicon wafers on which integrated circuits, in particular, for microprocessors, are fabricated ("**Wafer**"). It is intended to undertake at the new production facility own research and development to a considerable extent to develop to the industrial production stage semiconductor manufacturing technology, besides the production.

To carry out this project, AMD Fab 36 Limited Liability Company & Co. KG ("**AMD Fab 36**") has been formed. The sole general partner holding power of management and power of representation of AMD FAB 36 is AMD Fab 36 LLC; a further general partner without power of management and power of representation is a company with limited liability the shares in which are held by Leipziger Messe GmbH (LM Beteiligungsgesellschaft mbH). The limited partners of AMD Fab 36 are AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH as well as Leipziger Messe GmbH and M+W. The AMD Fab 36 Limited Partnership Agreement a draft of which is attached hereto as **Appendix 1** as an integral part of this Agreement ("**Limited Partnership Agreement**").

---

For the purpose of funding AMD Fab 36, the limited partners Leipziger Messe GmbH and M+W acquired an interest in AMD Fab 36 also as typical silent partners and, to this end, entered into an Agreement on the Formation of Typical Silent Partnerships with AMD Fab 36 (“**Silent Partnership Agreement**”). A draft of the Silent Partnership Agreement is attached hereto as **Appendix 2**.

The parties to this Agreement (the “**Parties**”) intend to lay down the terms for the acquisition of the silent partner’s interests of Leipziger Messe GmbH and M+W by the Purchasers or a third party to be designated by the Purchasers and stipulate the following agreement of purchase and sale:

Article 1

Legal Relations

Leipziger Messe GmbH holds a silent partner’s interest of € 80 million and M+W holds a silent partner’s interest of € 60 million in accordance with the Silent Partnership Agreement in the commercial undertaking of AMD Fab 36.

Article 2

Purchase

- 2.1 Leipziger Messe GmbH sells to the Purchasers, in proportion to their limited partner’s interests in AMD Fab 36, its silent partner’s interest in the commercial undertaking of AMD Fab 36, regardless of the actual value thereof, at a total purchase price of € 80 million as four (4) (part) interests of 25 % each. The (partial) purchase contracts shall become effective, respectively, 12, 24, 36 and/or 48 months after payment in full of the contribution owed under the Silent Partnership Agreement and the Limited Partnership Agreement. The purchase price amounts to € 20 million for each (part) interest regardless of the actual value thereof and shall be payable by the Purchasers in proportion to their limited partner’s interests in AMD Fab 36 and be due at the respective date referred to in sentence 2.



- 
- 2.2 M + W sells to the Purchasers, in proportion to their limited partner's interests in AMD Fab 36, its silent partner's interest in the commercial undertaking of AMD Fab 36, regardless of the actual value thereof, at a total purchase price of € 60 million as five (5) (part) interests of 20 % each. The (partial) purchase contracts shall become effective, 12, 24, 36, 48 and/or 60 months respectively after payment in full of the contribution owed under the Silent Partnership Agreement and the Limited Partnership Agreement. The purchase price amounts to € 12 million for each (part) interest regardless of the actual value thereof and shall be payable by the Purchasers in proportion to their limited partner's interests in AMD Fab 36 and be due at the respective date referred to in sentence 2.
- 2.3 Irrespective of the provisions of para. 2.1 and para. 2.2, the agreement of purchase and sale of the silent partner's interests referred to in Article 1 is formed also at the point in time at which any of the call options, acquisition rights, put options or rights of first refusal specified in Article 10 of the AMD Fab 36 Limited Partnership Agreement is exercised in a legally effective manner. If and to the extent that (part) interests have already been sold by such point in time pursuant to the provisions of para. 2.1 and para. 2.2, the object of purchase shall be determined by the remaining (part) interests and the (partial) purchase price due and payable at such point in time shall be determined in accordance with the (part) purchase price regulations of para. 2.1 and para. 2.2 regardless of the actual value.
- 2.4 Irrespective of the provisions of paragraphs 2.1, 2.2 and 2.3, an agreement of purchase and sale of the silent partner's interests referred to in Article 1 is formed also at the point in time at which a termination for good cause entitling Leipziger Messe GmbH and/or M+W to terminate the silent partner's interest(s) pursuant to para. 7.1 sentence 4 of the Silent Partnership Agreement takes effect. If and to the extent that (part) interests have already been sold by such point in time pursuant to the provisions of para. 2.1 and para. 2.2, the object of purchase shall be determined by the remaining (part) interests and the purchase price due and payable at such point in time shall be determined in accordance with the (part) purchase price regulations of para. 2.1 and para. 2.2 regardless of the actual value.
- 2.5 The purchase price pursuant to para. 2.1 through 2.4 is subject to the condition subsequent that the Security Agent under the Syndicated Loan Agreement dated

---

April 21, 2004 or a third person named by it effectively exercises the option granted to the Security Agent in the Option Agreement attached hereto in draft form as Appendix 3, including, in particular, payment of the purchase price.

- 2.6 The credit balance on the current account is not sold as far as it is attributable to the respective sold silent partner's interest(s) and/or part interests and as far as it can be withdrawn according to the Silent Partnership Agreement as per the respective relevant date specified in paragraphs 2.1, 2.2, 2.3 or 2.4. Any profit share accruing until the respective relevant date specified in paragraphs 2.1, 2.2, 2.3 or 2.4 for the respective sold silent partner's interest(s) and/or part interests shall be due to Leipziger Messe GmbH and M+W and be paid to Leipziger Messe GmbH and M+W at the respective relevant date specified in paragraphs 2.1, 2.2, 2.3 or 2.4 regardless of whether or not it may be withdrawn according to the Silent Partnership Agreement however only to the extent permissible under the Syndicated Loan Agreement.

Article 3

Option Right/Duty of Accession of AMD Inc.

- 3.1 In the cases set forth in paragraphs 2.1 through 2.4, the Purchasers shall have the right not to acquire themselves the silent partner's interest(s) and or the (part) interests but to designate a third party which acquires the silent partner's interest(s) and/or the (part) interest. This right must be exercised immediately, at the latest, however, fourteen (14) calendar days after the dates specified in paragraphs 2.1 through 2.4 by written notice to the respective seller.
- 3.2 If the Purchasers exercise the right specified in para. 3.1, the third party shall become party to the agreement of purchase and sale in lieu of the Purchasers (assumption of contract). The Purchasers shall insofar act as falsus procurator [vollmachtsloser Vertreter] of such third party.
- 3.3 After exercise of the right pursuant to para. 3.1, the full purchase price of the silent partner's interest(s) and/or (part) interests covered by the agreement of purchase and sale shall be payable by the named third party within a period of fourteen (14) calendar days. During such period, also the third party's approval shall be submitted in case that there is an action as falsus procurator pursuant to para. 3.2, sentence 2.

- 
- 3.4 The assumption of contract pursuant to the preceding para. 3.2 shall be subject to the conditions subsequent that, within the period of fourteen (14) calendar days as specified in the preceding para. 3.3, the Purchasers do not exercise the authority pursuant to para. 4.1 or para. 4.2, that the full purchase price of the silent partner's interest(s) and/or (part) interests covered by the agreement of purchase and sale is not paid by the named third person, that the third party does not submit the approval or that the third party does not accept the assignment. If any of those conditions subsequent does occur, AMD Inc. shall become party to the agreement of purchase and sale in lieu of the Purchasers and/or the third party. Likewise, AMD Inc. shall become party to the agreement of purchase and sale in lieu of the Purchasers if and when the Purchasers do not exercise their option right pursuant to para. 3.1 and do not pay the purchase price within fourteen (14) calendar days from expiration of the period specified in para. 3.1.

#### Article 4

##### Assignment

- 4.1 Leipziger Messe GmbH assigns its silent partner's interest to the Purchasers, among them in the proportion of their limited partner's interests in AMD Fab 36, as of the dates specified in paragraphs 2.1, 2.3 or 2.4, however, as of the dates specified in para. 2.1 only a (part) interest of 25% of the silent partner's interest, respectively. In addition, such assignment is subject to the condition precedent of payment of the full purchase price of the silent partner's interest, in case of assignment of a (part) interest pursuant to para. 2.1 of payment of the full purchase price of the (part) interest. In addition, the assignment is subject to the condition subsequent that the Purchasers exercise their option right pursuant to para. 3.1 and designate a third party which will acquire the silent partner's interest; in this case, Leipziger Messe GmbH hereby authorizes the Purchasers irrevocably and with exemption from the restrictions of Section 181 BGB [German Civil Code], in the name of Leipziger Messe GmbH, to offer the assignment of the silent partner's interest to such third party subject to the condition precedent of payment of the full purchase price of the silent partner's interest or the (part) interest. If the Purchasers do not exercise their option right pursuant to para. 3.1 and do not pay the purchase price within a period of fourteen (14) calendar days from expiration of the period specified in para. 3.1,

---

Leipziger Messe GmbH assigns to AMD Inc. its silent partner's interest upon the dates mentioned in paragraphs 2.1, 2.3 or 2.4, upon the dates mentioned in para 2.1, however, only a (part) silent partner's interest in the amount of 25 per cent, respectively; in such event, AMD Inc. accepts this assignment. Likewise, Leipziger Messe GmbH assigns to AMD Inc. its silent partner's interest as of the dates specified in paragraphs 2.1, 2.3 or 2.4, however, as of the dates specified in para. 2.1 only a (part) interest of 25 per cent, and AMD Inc. accepts such assignment in the event that the Purchasers exercise their option right pursuant to para. 3.1 yet, within the period specified in para. 3.3, (i) the Purchasers do not submit the authority pursuant to sentence 3, (ii) the third party does not accept the assignment or (iii) the third party does not pay the purchase price. Also the assignment to AMD Inc. is again subject to the condition precedent of payment of the full purchase price of the silent partner's interest, in case of assignment of a (part) interest pursuant to para. 2.1 of payment of the full purchase price of the (part) interest.

- 4.2 M + W assigns its silent partner's interest to the Purchasers, among them in the proportion of their limited partner's interests in AMD Fab 36, as of the dates specified in paragraphs 2.2, 2.3 or 2.4, however, as of the dates specified in para. 2.2 only a (part) interest of 20% of the silent partner's interest, respectively. In addition, such assignment is subject to the condition precedent of payment of the full purchase price of the silent partner's interest, in case of assignment of a (part) interest pursuant to para. 2.2 of payment of the full purchase price of the (part) interest. In addition, the assignment is subject to the condition subsequent that the Purchasers exercise their option right pursuant to para. 3.1 and designate a third party which will acquire the silent partner's interest; in this case, M+W hereby authorizes the Purchasers irrevocably and with exemption from the restrictions of Section 181 BGB [German Civil Code], in the name of M + W, to offer the assignment of the silent partner's interest to such third party subject to the condition precedent of payment of the full purchase price of the silent partner's interest or the (part) interest. If the Purchasers do not exercise their option right pursuant to para. 3.1 and do not pay the purchase price within a period of fourteen (14) calendar days from expiration of the period specified in para. 3.1, M+W assigns to AMD Inc. its silent partner's interest upon the dates mentioned in paragraphs 2.1, 2.3 or 2.4, upon the dates mentioned in para 2.1, however, only a (part) silent partner's interest in the amount of 25 per cent, respectively; in such event, AMD Inc.

- 
- accepts this assignment. Likewise, M + W assigns to AMD Inc. its silent partner's interest as of the dates specified in paragraphs 2.2, 2.3 or 2.4, however, as of the dates specified in para. 2.1 only a (part) interest of 20 per cent, and AMD Inc. accepts such assignment in the event that the Purchasers exercise their option right pursuant to para. 3.1 yet, within the period specified in para. 3.3, (i) the Purchasers do not submit the authority pursuant to sentence 3, (ii) the third party does not accept the assignment or (iii) the third party does not pay the purchase price. Also the assignment to AMD Inc. is again subject to the condition precedent of payment of the full purchase price of the silent partner's interest, in case of assignment of a (part) interest pursuant to para. 2.1 of payment of the full purchase price of the (part) interest.
- 4.3 Furthermore, the assignments pursuant to para. 4.1 and para. 4.2 are subject to the condition subsequent that the Security Agent under the Syndicated Loan Agreement dated April 21, 2004 or a third person named by it effectively exercises the option granted to the Security Agent in the Option Agreement attached hereto in draft form as **Appendix 3**, including, in particular, payment of the purchase price.
- 4.4 The Purchasers hereby accept the assignments pursuant to para. 4.1 and para. 4.2.

#### Article 5

##### Representations and Warranties

- 5.1 Leipziger Messe GmbH represents and warrants, however, exclusively with respect to its silent partner's interest, that the same has been constituted in a legally effective manner and is not encumbered with any third party rights at the time of final transfer of the silent partner's interest and/or of a (part) interest sold pursuant to para. 2.1. Leipziger Messe GmbH does not give any other warranty, in particular, no warranty for the value of the silent partner's interest and/or of a (part) interest sold pursuant to para. 2.1.
- 5.2 M + W represents and warrants, however, exclusively with respect to its silent partner's interest, that the same has been constituted in a legally effective manner and is not encumbered with any third party rights at the time of final

---

transfer of the silent partner's interest and/or of a (part) interest sold pursuant to para. 2.2. Leipziger Messe GmbH does not give any other warranty, in particular, no warranty for the value of the silent partner's interest and/or of a (part) interest sold pursuant to para. 2.2.

- 5.3 In the event that the Purchasers, the named third parties or AMD Inc., as far as they become a contract party, suffer quantifiable pecuniary disadvantages as a result of any incorrectness or incompleteness of the representations and warranties of Leipziger Messe GmbH specified in para. 5.1, Leipziger Messe GmbH shall be obligated to compensate the Purchasers for the damage (in priority restitution in kind). Likewise, M + W shall be obligated to compensate the Purchasers, the named third parties or AMD Inc., as far as they become a contract party, for the damage (in priority restitution in kind) in the event that the Purchasers, the named third parties or AMD Inc., as far as they become a contract party, suffer quantifiable pecuniary disadvantages as a result of any incorrectness or incompleteness of the representations and warranties of M + W specified in para. 5.2. the Purchasers shall not have any further or other warranty claims with any substance, of any kind and for any legal ground whatsoever, against Leipziger Messe GmbH and/or M + W. Any damage claims shall become barred by the statute of limitations three (3) years after the date on which the respective purchase price is due and payable.

#### Article 6

##### Partial Invalidity and Amendments

- 6.1 If any provision of this Agreement or a provision inserted in this Agreement in the future is or will be invalid or unenforceable, in whole or in part, or if this Agreement contains a gap, this shall not affect the validity of the remaining provisions hereof. In lieu of the invalid or unenforceable provision or to fill the gap, a reasonable regulation shall apply which, as far as legally permissible, most nearly achieves what has been intended by the contract parties or what they would have intended according to the purpose and the meaning of this Agreement if they had considered the issue.
- 6.2 Modifications of or supplements to this Agreement shall be valid only if in writing. This applies also to a waiver of the requirement of written form.

---

6.3 This Agreement shall be governed by the laws of the Federal Republic of Germany.

Dresden, April 21, 2004

/s/ Robert J. Rivet

\_\_\_\_\_  
(Advanced Micro Devices, Inc.)

/s/ Hans-Raimund Deppe

\_\_\_\_\_  
(AMD Fab 36 Admin GmbH)

/s/ Authorized Persons

\_\_\_\_\_  
(Fab 36 BeteiligungsGmbH)

/s/ Hans-Raimund Deppe

\_\_\_\_\_  
(AMD Fab 36 Limited Liability Company & Co. KG)

/s/ Hans-Raimund Deppe

\_\_\_\_\_  
(AMD Fab 36 Holding GmbH)

/s/ Josef Rahmen /s/ Matthias Rose

\_\_\_\_\_  
(Leipziger Messe GmbH)

**AMD FAB 36 HOLDING COST PLUS REIMBURSEMENT AGREEMENT**

**between**

**AMD FAB 36 HOLDING GMBH**  
Wilschdorfer Landstr. 101, 01109 Dresden

- hereinafter referred to as "**AMD Fab 36 Holding**" -

**and**

**Advanced Micro Devices, Inc.**  
One AMD Place, Sunnyvale, California 94088,  
United States of America

- hereinafter referred to as "**AMD Inc.**" -



---

RECITALS

WHEREAS, AMD Fab 36 Holding holds a majority interest in AMD Fab 36 Limited Liability Company & Co. KG having its registered office in Dresden (“**AMD Fab 36**”). AMD Fab 36 Holding is in turn a wholly-owned Subsidiary of AMD Inc.;

WHEREAS, AMD Inc., AMD Fab 36 Holding and AMD Fab 36 are currently involved in the planning and implementation stages of a project pursuant to which AMD Fab 36 will use and develop to the production stage semiconductor manufacturing technology and produce 300 mm Wafers, in particular, for microprocessors, in a newly to be constructed wafer plant in Dresden;

WHEREAS, concurrently with conclusion of this Agreement (this “**Agreement**”), AMD Fab 36 and AMD Fab 36 Holding are entering into an AMD Fab 36 Cost Plus Reimbursement Agreement (as amended from time to time the “**AMD Fab 36 Cost Plus Reimbursement Agreement**”) pursuant to which AMD Fab 36 Holding is obtaining the exclusive right to purchase Wafers from AMD Fab 36 and AMD Fab 36 is agreeing, on such exclusive basis, to manufacture and sell Wafers to AMD Fab 36 Holding, in each case on the terms and conditions of the AMD Fab 36 Cost Plus Reimbursement Agreement;

WHEREAS, on the terms and conditions of this Agreement, AMD Inc. wishes the exclusive right to purchase all such Wafers as are purchased by AMD Fab 36 Holding from AMD Fab 36 on the terms and conditions of the AMD Fab 36 Cost Plus Reimbursement Agreement, and AMD Fab 36 Holding is willing, on such exclusive basis, to sell such Wafers to AMD Inc.; and

WHEREAS, on 31 October 2003, AMD Inc., AMD Fab 36 Holding GmbH, AMD Fab 36 and AMD Saxony Limited Liability Company & Co. KG, Dresden (“**AMD Saxony**”) entered into a Management Service Agreement (“**Fab 36 Management Service Agreement**”) and AMD Inc., AMD Fab 36 Holding GmbH, and AMD Fab 36 entered into a license agreement.

NOW, THEREFORE, in consideration of above, the parties hereto agree as follows:

---

**ARTICLE I**  
**Purchase of Products**

**Section 1.01. Sale of Products by AMD Fab 36 to AMD Inc.**

(a) On the terms and subject to the conditions of this Agreement, AMD Fab 36 Holding hereby agrees to sell to AMD Inc. 100% of such Products as are manufactured by AMD Fab 36 and sold to AMD Fab 36 Holding on the terms and subject to the conditions of the AMD Fab 36 Cost Plus Reimbursement Agreement. Products within the meaning of this Agreement are all Wafers manufactured by AMD Fab 36. AMD Fab 36 Holding further agrees that, during the term of this Agreement, unless AMD Inc. and, prior to the Loan Agreement Termination Date, the Facility Agent, otherwise consent thereto, it shall not, directly or indirectly, (i) sell any Products or any other goods or services to any Person other than AMD Inc. or one or more of AMD Inc.'s Subsidiaries under any circumstances, or (ii) order products from AMD Fab 36 which have not been ordered by AMD Inc. from AMD Fab 36 Holding hereunder, (iii) amend, supplement or otherwise modify the AMD Fab 36 Cost Plus Reimbursement Agreement, (iv) engage in any activities other than (a) the investment in equity of AMD Fab 36, (b) the making of loans and the provision of other financial support to AMD Fab 36, (c) the purchase and sale of Products as contemplated hereby and (d) activities reasonably incidental to any of the foregoing.

(b) On the terms and subject to the conditions of this Agreement, AMD Inc. hereby agrees to purchase from AMD Fab 36 Holding all Products manufactured by AMD Fab 36 and sold to AMD Fab 36 Holding in accordance with the terms of the AMD Fab 36 Cost Plus Reimbursement Agreement and to pay for such Products the purchase price determined pursuant to Article II.

(c) AMD Inc. shall from time to time provide, for and on behalf of AMD Fab 36 Holding, or shall arrange for one or more of its Subsidiaries to provide, in particular, but not only under the Management Service Agreement, to AMD Fab 36 technical assistance as required in Article III of the AMD Fab 36 Cost Plus Reimbursement Agreement (including the disclosure stated therein and the permission to make copies and assign employees to Fab 30). Irrespective of any fault, AMD Inc. warrants by means of an independent promise of warranty pursuant to Section 311 para. 1 German Civil Code that Wafers which meet the requirements can be manufactured in a timely manner with the provided technical assistance and the rights on intellectual property granted according to Section 3 b) of the License Agreement and the technical documentation. The exclusive legal consequence of the warranty irrespective of fault is that AMD Inc. cannot invoke bad performance/non-performance by AMD Fab 36 Holding; such warranty has no other legal consequences.

Without limiting the generality of the foregoing, the Know-how to be provided pursuant to this Section 1.01(c) and Article III of the AMD Fab 36 Cost Plus Reimbursement Agreement shall include such of the "Specific Results" (as such term is defined in the JDA),

---

as are necessary or, in the reasonable opinion of AMD Inc., desirable, to enable AMD Fab 36 to manufacture Products on a timely basis, in accordance with the Specifications for the relevant Product. Any disclosure of Know-how and Specifications pursuant to this Section 1.01(c) or Article III of the AMD Fab 36 Cost Plus Reimbursement Agreement (including, without limitation, Know-how consisting of Specific Results and Know-how disclosed by way of the furnishing of technical assistance) to AMD Fab 36 by or on behalf of AMD Inc. or AMD Fab 36 Holding shall be subject to the License Agreement.

**Section 1.02. Compliance with Laws and Required Permits.**

AMD Fab 36 Holding shall use commercially reasonable efforts to (i) comply with all applicable Laws relating to the sale of the Products, and (ii) obtain all requisite consents, authorizations, permits and approvals for the sale to AMD Inc. of the Products from each governmental authority having jurisdiction over the sale of the Products by AMD Fab 36 Holding to AMD Inc.; provided, however, that AMD Fab 36 Holding shall not be responsible for obtaining any consents, authorizations, permits or approvals in connection with the import of Products into any territory outside Germany unless expressly otherwise agreed by AMD Fab 36; (iii) Irrespective of any fault, AMD Inc. warrants by means of an independent promise of warranty pursuant to Section 311 para. 1 German Civil Code that the distribution of the Products is not conflicting with German law and U.S. law. The exclusive legal consequence of the warranty irrespective of fault is that AMD Inc. cannot invoke bad performance/non-performance by AMD Fab 36 Holding; such warranty has no other legal consequences.

**Section 1.03. Quality of Products; Inspection and Rejection; Replacement Products.** Without prejudice to AMD Inc.'s obligation to make payment for Products shipped pursuant to Section 2:

(a) AMD Holding shall use all reasonable efforts to ensure that each Product shipped meets the Specifications for that Product. In order to assist AMD Fab 36 Holding in such efforts and for the purpose of assuring to AMD Inc. the quality of the Products required under this Agreement, AMD Fab 36 Holding shall permit AMD Inc. and its Subsidiaries, at any time during normal working hours and on reasonable notice, to inspect any premises of AMD Fab 36 Holding, and shall use all reasonable efforts to permit such representatives, at such time and on such notice, to inspect any premises of any third party where any of the Products, or any labeling or packaging for them, are manufactured by or for AMD Fab 36 Holding. Furthermore, AMD Fab 36 Holding shall cause AMD Fab 36 to make the efforts described in this Section 1.03.(a) and/or to issue permissions to AMD Inc. for such inspections at AMD Fab 36 or third-party contractors of AMD Fab 36.

(b) AMD Inc. shall promptly notify AMD Fab 36 Holding in writing should the quality of the Products shipped vary materially from the typical quality of the four previous

---

shipments or, in the case of the first four shipments, from the quality of the previous shipments. In such event, AMD Fab 36 Holding shall use its reasonable commercial efforts to restore the quality of the Products shipped hereunder to again meet such typical quality as soon as possible and will cause AMD Fab 36 to look after that.

## **ARTICLE II**

### **Purchase Price and Delivery of Products**

#### **Section 2.01. Purchase and Payment Obligation.**

(a) From and after the Effective Date AMD Inc. shall purchase all Products which it orders from AMD Fab 36 Holding and are shipped by AMD Fab 36 Holding in accordance with the requirements of this Agreement. The purchase price for the Products shall be equal the Selling Price Per Wafer as defined in Section 2.01 in conjunction with Section 2.02 of the AMD Fab 36 Cost Plus Reimbursement Agreement.

For all Products shipped during any Month, AMD Inc. shall make payments to AMD Fab 36 Holding based on the Selling Price Per Wafer.

In addition, AMD Inc. shall purchase from AMD Fab 36 Holding any and all damage claims acquired by AMD Fab 36 Holding pursuant to Section 2.06 a) of the AMD Fab 36 Cost Plus Reimbursement Agreement from AMD Fab 36.

(b) In aggregate, AMD Inc. agrees to make payments to AMD Fab 36 Holding which in terms of their amount and due date shall correspond to all payments due and to be made by AMD Fab 36 Holding to AMD Fab 36 under the AMD Fab 36 Cost Plus Reimbursement Agreement. This applies, in particular, without limitation to

- Advance Payments pursuant to Section 2.03 of the AMD Fab 36 Cost Plus Reimbursement Agreement,
- payment of the Selling Price Per Wafer by AMD Fab 36 Holding pursuant to Section 2.02 of the AMD Fab 36 Cost Plus Reimbursement Agreement,
- annual compensation for certain administrative costs, pursuant to Section 2.04 of the AMD Fab 36 Cost Plus Reimbursement Agreement,
- costs for transportation and insurance pursuant to Section 2.05 of the AMD Fab 36 Cost Plus Reimbursement Agreement, and

- any damages payable by AMD Fab 36 Holding on the basis of Section 5.01 b) at the end of the AMD Fab 36 Cost Plus Reimbursement Agreement.

If and to the extent that payments are made by AMD Fab 36 Holding to AMD Fab 36 against assignment of claims, such claims shall be assigned by AMD Fab 36 Holding to AMD Inc. at the time when AMD Inc. effects payment, and AMD Inc. hereby accepts such assignment.

**Section 2.02. Shipping Terms.** AMD Fab 36 Holding shall deliver the Products purchased hereunder from Dresden, Germany. Pursuant to Section 2.05 of the AMD Fab 36 Cost Plus Reimbursement Agreement, AMD Fab 36 will arrange all freight, trucking and insurance. The costs for transportation and insurance will – as far as applicable - be separately regulated by the parties on a case-by-case basis (in accordance with the regulation as agreed from time to time between AMD Fab 36 and AMD Fab 36 Holding).

**Section 2.03. Payments; Set Off.**

(a) AMD Inc. shall pay to AMD Fab 36 Holding the Selling Price Per Wafer for all Products shipped by AMD Fab 36 Holding prior to the purchase price due date for such Products under the AMD Fab 36 Cost Plus Reimbursement Agreement (if AMD Fab 36 or AMD Fab 36 Holding notifies this reasonably in advance) within 30 days after receipt of invoices denominated in Euro from AMD Fab 36 Holding in accordance with this Section 2.03. AMD Fab 36 Holding shall be entitled to issue invoices to AMD Inc. on a monthly basis.

(b) Payment for all other amounts due hereunder from either party (including any payments under Section 2.01 b)) shall be unconditionally due on or before the date specified in the AMD Fab 36 Cost Plus Reimbursement Agreement for such amount. AMD Holding agrees that each and every confirmation, invoice or declaration from AMD Fab 36 to AMD Fab 36 Holding which under the AMD Fab 36 Cost Plus Reimbursement Agreement must be delivered by AMD Fab 36 to AMD Holding prior to the relevant due date will be delivered to AMD Inc. without delay and in any event prior to the relevant due date.

(c) All amounts under this Agreement not paid when due from AMD Inc. shall bear interest at the rate of 3% above the three-month EURIBOR per annum on a pro rata temporis basis. Such interest shall be due and payable at the end of each calendar month.

(d) Any amounts that are due from AMD Fab 36 Holding to AMD Inc. hereunder shall be payable only in the form of credit against amounts owed or to be owed by AMD Inc. to AMD Fab 36 Holding under this Agreement, except to the extent provided in Section 3.02 in conjunction with the Fab 36 Management Service Agreement. Any amount that is due from AMD Inc. to AMD Fab 36 Holding hereunder may be set-off against any payment then due under Sections 3, 5.02, or the Fab 36 Management Service Agreement, from AMD Fab 36 Holding to AMD Inc.

---

(e) AMD Fab 36 Holding has the right to assign to AMD Fab 36 its payment claims against AMD Inc. under this Agreement to secure the payment claims of AMD Fab 36 against AMD Fab 36 Holding under the AMD Fab 36 Costs Plus Reimbursement Agreement (including damage claims in case that, in the event of bankruptcy of AMD Inc., the trustee in bankruptcy of AMD Inc. or any other person with similar authority does not continue the Fab 36 Holding Cost Plus Reimbursement Agreement, regardless of whether such damage claims result under German or U.S. state or federal law).

**Section 2.04. Method of Payment.** Payments under this Agreement from AMD Inc. to AMD Fab 36 Holding, if made other than by set-off permitted by Section 2.03, shall be deposited into an account of AMD Fab 36 Holding at Dresdner Bank AG, Dresden Branch or such other account of AMD Fab 36 Holding specified by AMD Fab 36 Holding with the prior written consent of the Facility Agent (a copy of which consent shall be delivered by AMD Fab 36 Holding to AMD Inc.) with not less than 15 days written notice to AMD Fab 36 Holding, and all such payments shall be made in Euro, or in US-Dollar, or a combination of Euro and US-Dollar, in each case at the option of AMD Fab 36 Holding. The relevant US-Dollar amount results from the conversion of Euro to US-Dollar at the Facility Agent's spot rate of exchange as in effect on the date of the relevant invoice.

**Section 2.05. Product Warranty.** Subject to Section 2.06, AMD Fab 36 Holding represents and warrants that all Products sold to AMD Inc. pursuant to this Agreement shall conform in all material respects to the Specifications for such Products and, if expressly agreed by AMD Fab 36 Holding in writing in advance, to any specific changes thereto.

**Section 2.06. Disclaimer.** THE WARRANTY CONTAINED IN SECTION 2.05 IS THE SOLE AND EXCLUSIVE WARRANTY AS TO THE PRODUCTS AND IS EXPRESSLY IN LIEU OF ANY EXPRESS OR IMPLIED WARRANTIES, IN FACT OR IN LAW, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY SIMILAR WARRANTIES IMPLIED BY APPLICABLE LAW. REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS SHALL BE AMD INC.'s EXCLUSIVE REMEDY WITH RESPECT TO DEFECTIVE PRODUCTS. AMD FAB 36 HOLDING ASSUMES NO LIABILITY IN TORT OR STRICT LIABILITY, NOR SHALL AMD FAB 36 HOLDING BE LIABLE TO AMD INC. OR ANY AFFILIATE THEREOF FOR LOSS OR USE OF PRODUCTS OR ANY OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY AMD INC. OR ANY SUBSIDIARY OR AFFILIATE THEREOF. IN NO EVENT SHALL THE LIABILITY OF AMD FAB 36 HOLDING ARISING IN CONNECTION WITH ANY PRODUCTS SOLD HERUNDER EXCEED THE PURCHASE PRICE FOR SUCH PRODUCTS.

**Section 2.07. Annual Compensation for Certain Administrative Costs.** AMD Inc. shall compensate AMD Fab 36 Holding for any costs not covered by Sections 2.01 and 2.02, including without limitation bookkeeping, legal and accounting costs, incurred by AMD Fab 36 Holding from time to time in connection with this Agreement and the AMD Fab 36 Cost Plus Reimbursement Agreement plus a markup of 7.5% on such costs. Such payment shall be made not later than 30 days after the end of each Fiscal Year.

**Section 2.08 Limitation of Claims.** AMD Fab 36 Holding in AMD Inc. agree that AMD Inc. shall only be entitled to raise claims against AMD Fab 36 Holding under this Agreement if and to the extent AMD Fab 36 Holding on its part can raise claims against AMD Fab 36 under the AMD Fab 36 Cost Plus Reimbursement Agreement. For the discharge of its obligations, AMD Fab 36 Holding shall be entitled to assign its claims against AMD Fab 36 to AMD Inc.

### **ARTICLE III**

#### **Technical Assistance**

**Section 3.01. Provision of Know-how and Advice, Training and Technical Assistance, Access to Comparable Plants.** AMD Inc. will provide technical assistance pursuant to Section 1.01(c) hereof. Insofar as a declaration from AMD Fab 36 Holding is a precondition for such obligations pursuant to Section 3 of the AMD Fab 36 Cost Plus Reimbursement Agreement, AMD Fab 36 Holding shall immediately after making such declaration inform AMD Inc. thereof.

#### **Section 3.02. Charge for Technical Assistance.**

(a) The remuneration for services provided under this Section 3 or under Section 1.01.c) shall be paid by AMD Fab 36 directly to AMD Inc. in accordance with the Fab 36 Management Service Agreement.

(b) The foregoing notwithstanding, the parties agree that, without prejudice to the last sentence of Section 1.01(c) or to the License Agreement, any Intellectual Property provided in any form to AMD Fab 36 (or AMD Fab 36 Holding for the benefit of AMD Fab 36) for its use hereunder is provided at no charge.

### **ARTICLE IV**

#### **Accounting Reports: Other Reports:**

#### **Right of Inspection**

**Section 4.01. Annual Accounting Reports from AMD Fab 36 Holding, Inspection Rights.** AMD Inc. and its duly authorized representatives (which may include duly authorized representatives of a Subsidiary of AMD Inc.) and, if the Loan Agreement

Termination Date has not yet taken place, the Facility Agent shall at all reasonable times have access to the books and accounts kept by AMD Fab 36 Holding and annually upon the closing of the Fiscal Year (starting with the Fiscal Year 2004) all such books and accounts shall be audited by a firm of independent and internationally known public accountants selected by AMD Fab 36 Holding with the approval of AMD Inc. and, if the Loan Agreement Termination Date has not yet taken place, the Facility Agent (the consent of the Facility Agent not to be unreasonably withheld). A copy of each such report of audit shall be sent to AMD Inc. and, prior to the Loan Agreement Termination Date, the Facility Agent. AMD Inc. and its duly authorized representatives (which may include duly authorized representatives of a Subsidiary of AMD Inc.) shall also have the right to examine and inspect at any reasonable time all properties and operations of AMD Fab 36 Holding to which this Agreement relates.

**Section 4.02. Rights of Inspection at AMD Fab 36.** AMD Fab 36 Holding shall make sure that (i) AMD Inc. and its representatives (which may include a Subsidiary of AMD Inc.) and, prior to the Loan Agreement Termination Date, the Facility Agent shall at all reasonable times have access to the books and accounts kept by AMD Fab 36, (ii) all books and accounts kept by AMD Fab 36 will be audited once per year on completion of the Fiscal Year by an independent and internationally recognized auditing firm to be appointed by AMD Fab 36 with the approval of AMD Fab 36 Holding and, prior to the Loan Agreement Termination Date, of the Facility Agent (with the Facility Agent's approval not to be withheld unreasonably), (iii) a copy of the auditing report be delivered to AMD Inc. without delay, and (iv) AMD Inc. and its representatives (which may include duly authorized representatives of a Subsidiary of AMD Inc.) are authorized to inspect at all reasonable times all Plant facilities of AMD Fab 36 to which the AMD Fab 36 Cost Plus Reimbursement Agreement relates.

The rights of Leipziger Messe GmbH and of M+W Zander Fünfte Verwaltungsgesellschaft mbH ("M+W") as direct or indirect partners of AMD Fab 36 pursuant to Article 9.3 of the Limited Partnership Agreement of AMD Fab 36 remain unaffected.

## ARTICLE V

### **Effectiveness; Termination**

#### **Section 5.01. Effectiveness; Termination.**

(a) This Agreement shall become effective on the date hereof and (unless otherwise extended) shall terminate on the date which is the earlier of (i) the effective date of the ordinary notice of termination given by any of the Parties with three months' notice, such effective date being the end of any calendar month, however, not before the Loan Agreement Termination Date and (ii) the termination pursuant to subsection (b) sentence 1 below. No notice of ordinary termination may be given by AMD Inc. as long as Leipziger Messe GmbH and/or M+W are direct or indirect partners of AMD Fab 36, unless Leipziger Messe GmbH and/or M+W consent to such termination.



---

(b) This Agreement terminates upon termination of the AMD Fab 36 Cost Plus Reimbursement Agreement. The right to assert statutory damage claims (Section 314 (4) BGB [German Civil Code] in conjunction with Sections 280 et seq. BGB) on the ground of termination of this Agreement for the reasons set out in Section 5.01 (b) of the AMD Fab 36 Cost Plus Reimbursement Agreement and termination of this Agreement resulting therefrom remains unaffected.

**Section 5.02. Rights Upon Termination.**

(a) Promptly, but in no event later than 20 days following the Termination Date,

(i) the actual Selling Price for the Month ending on the Termination Date shall be calculated in accordance with Section 2.02 of the AMD Fab 36 Cost Plus Reimbursement Agreement; and

(ii) if no Products were shipped in the Month ending on the Termination Date, the final Advance Payment Adjustment Amount for that Month shall be calculated in accordance with Section 2.03 of the AMD Fab 36 Cost Plus Reimbursement Agreement.

(b) Upon termination of this Agreement, AMD Inc. shall purchase, as of the Termination Date, (i) all inventory and work-in-process of AMD Fab 36 Holding and (ii) all inventory and work-in-process which AMD Fab 36 Holding is obliged to purchase under Section 5.02 (b) of the AMD Fab 36 Cost Plus Reimbursement Agreement. The purchase price shall be, in the case of lit. (i) above, equal to the value thereof as shown in the books of AMD Fab 36 Holding in accordance with German GAAP and, in the case of lit. (ii) above, equal to the purchase price to be paid by AMD Fab 36 Holding under Section 5.02 b) of the AMD Fab 36 Cost Plus Reimbursement Agreement.

(c) Upon termination of this Agreement, all amounts shall be offset between the parties and the balance shall be settled by payment.

**Section 5.03. Survival.** The provisions of Sections 2.05 and 2.6, 5.02, 6.02, 6.03 and 6.06 shall survive any termination of this Agreement.

---

## ARTICLE VI

### Miscellaneous

#### **Section 6.01. Force Majeure.**

(a) A party to this Agreement shall not be liable for the consequences of any failure to perform, or default in performing, any of its obligations, other than its payment obligations, under this Agreement if that party can show that such failure is caused by Force Majeure. In the event that no Wafers can be manufactured due to Force Majeure, the payment obligations hereunder shall continue to be owed.

(b) In case of subsection (a), the said failure shall not be considered non-compliance with any term or condition of this Agreement, and all the obligations (other than payment obligations) and times which because of such Force Majeure could not be fulfilled shall be deemed to have been suspended while the Force Majeure continues. In addition, the party for whom such obligations and/or times have been suspended shall be entitled to take reasonable steps during the pendency of the relevant Force Majeure to limit its losses resulting from such Force Majeure, and following the occurrence of such Force Majeure such obligations and/or times shall continue to be suspended for such further reasonable period as is necessary for such party to restore its capacity to perform such obligations and/or meet such times.

**Section 6.02. Applicable Law.** This Agreement is governed by the law of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 is expressly excluded.

#### **Section 6.03. Dispute Resolution.**

a) The parties shall endeavor to reach an amicable settlement of any dispute arising out of or in connection with this Agreement and its implementation, including any question regarding its existence, validity, termination or its performance, or in connection with arrangements regarding the performance of this Agreement.

b) If any party declares that a reasonable attempt at amicable settlement of a dispute mentioned in sub-section a) has failed, such dispute shall be finally resolved by arbitration, to the exclusion of the courts of regular jurisdiction, under the Rules of Arbitration (*Schiedsgerichtsordnung*) of the German Arbitration Board ("Deutsche Institution für Schiedsgerichtswesen e.V."), by three arbitrators. The place of arbitration shall be Dresden, Germany. The German Code of Civil Procedure shall apply where the Rules of Arbitration are silent.

c) The language to be used in the arbitration proceedings shall be German and all documents written in a language other than German shall be translated into the German language for the arbitration proceedings, unless otherwise decided by the parties to the arbitration proceedings.

---

d) The arbitral awards shall be substantiated in writing. The arbitration tribunal shall decide on the matter of costs of the arbitration and on the allocation of expenditure among the respective parties to the arbitration proceedings.

**Section 6.04. Definitions.**

It is the will of the parties hereto that each of the terms used herein and listed in the Annex 1 to the AMD Fab 36 Cost Plus Reimbursement Agreement has the meaning specified there unless the context requires a different interpretation.

**Section 6.05. Assignment.**

None of the parties hereto shall have the right to assign its rights hereunder without the prior written consent of the other party hereto, of Leipziger Messe GmbH and of M+W as long as they are limited partners of AMD Fab 36 and, prior to the Loan Agreement Termination Date, of the Security Agent. However, AMD Fab 36 Holding may assign its rights under this Agreement to the Security Agent and/or the Banks as security for obligations of AMD Fab 36 under the Loan Agreement, and the Security Agent may in turn assign such rights to any direct transferee of the Plant in the context of the proper realization of such security.

**Section 6.06. Language.**

The German version of this Agreement shall be controlling.

**Section 6.07 Final Provisions.**

a) Modifications or amendments to this Agreement shall be valid only if in writing and only with the written consent of all partners of AMD Fab 36 as far as rights or the economic position of Leipziger Messe GmbH and M+W as limited partners of AMD Fab 36 are not insignificantly adversely affected thereby, directly or indirectly, as long as Leipziger Messe GmbH or M+W are limited partners of AMD Fab 36. The partners shall be obliged to consent to amendments or modifications of this Agreement which only reflect amendments or modifications of the AMD Fab 36 Cost Plus Reimbursement Agreement. This requirement of written form may only be waived in writing.

b) If present or future terms of this Agreement are invalid or unenforceable in whole or in part or lose their validity or enforceability at a later date, this shall not affect the validity of the remaining provisions hereof. The same shall apply insofar as it

---

transpires that there is a gap in this agreement. The invalid or unenforceable provision shall be replaced, or the gap filled, by a reasonable provision which, to the extent legally permissible, comes closest to what the contracting parties intended or would have intended in accordance with the meaning and purpose of this Agreement, had they considered the point upon conclusion hereof. This also applies if the invalidity of a provision results from a degree of performance standardized hereunder (set period, date); in such cases a legally permissible degree of performance or time (set period, date), coming as close as possible to the intentions, shall replace what was agreed.

In case of disputes arising among the parties hereto due to subsections a) and b) above, the arbitration tribunal (Section 6.03) shall be entitled to determine with binding force the provision which is to apply thereunder.

Dresden, April 21, 2004

Dresden, 21. April 2004

/s/ Robert J. Rivet

/s/ Dr. Hans-Raimund Deppe

---

Advanced Micro Devices, Inc.  
Robert J. Rivet  
Chief Financial Officer

---

AMD Fab 36 Holding GmbH  
Dr. Hans-Raimund Deppe  
Managing Director

**AMD FAB 36 COST PLUS REIMBURSEMENT AGREEMENT**

**between**

**AMD FAB 36 HOLDING GMBH**  
Wilschdorfer Landstr. 101, 01109 Dresden

- hereinafter referred to as “**AMD Fab 36 Holding**” -

**and**

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG**  
Wilschdorfer Landstr. 101, 01109 Dresden

- hereinafter referred to as “**AMD Fab 36**” -

---

RECITALS

WHEREAS, AMD Fab 36 is a majority-owned Subsidiary of AMD Fab 36 Holding, which in turn is a wholly-owned Subsidiary of Advanced Micro Devices, Inc., a corporation organized and existing under the laws of the State of Delaware, United States of America (“**AMD Inc.**”);

WHEREAS, AMD Inc., AMD Fab 36 Holding and AMD Fab 36 are currently involved in the planning and implementation stages of a project pursuant to which AMD Fab 36 will use and develop to the production stage semiconductor manufacturing technology and produce 300 mm Wafers, in particular, for microprocessors, in a newly to be constructed wafer plant in Dresden;

WHEREAS, concurrently with conclusion of this Agreement (this “**Agreement**”), AMD Inc. and AMD Fab 36 Holding are entering into the AMD Fab 36 Holding Cost Plus Reimbursement Agreement which is attached as Annex A and pursuant to which, among other things, AMD Inc. will agree to purchase all Wafers purchased by AMD Fab 36 Holding from AMD Fab 36, and AMD Fab 36 Holding will agree to supply on an exclusive basis to AMD Inc., such Wafers, in each case on the terms and conditions of the AMD Fab 36 Holding Cost Plus Reimbursement Agreement;

WHEREAS, on the terms and conditions of this Agreement, AMD Fab 36 Holding wishes the exclusive right to purchase Wafers from AMD Fab 36 in order to enable AMD Fab 36 Holding to fulfill its obligations under the AMD Fab 36 Holding Cost Plus Reimbursement Agreement, and AMD Fab 36 is willing, on such exclusive basis, to manufacture and sell Wafers to AMD Fab 36 Holding, all on the terms and conditions of this Agreement; and

WHEREAS, AMD Inc., AMD Fab 36 Holding GmbH, AMD Fab 36 and AMD Saxony Limited Liability Company & Co. KG, Dresden (“**AMD Saxony**”) entered into a Management Service Agreement dated October 31, 2003 (“**Fab 36 Management Service Agreement**”) and AMD Inc., AMD Fab 36 Holding GmbH, and AMD Fab 36 entered into a license agreement.

NOW, THEREFORE, in consideration of above, the parties hereto agree as follows:

---

## ARTICLE I Manufacture of Products

### Section 1.01. **Manufacture by AMD Fab 36 of Products for Sale to AMD Fab 36 Holding.**

(a) On the terms and subject to the conditions of this Agreement, AMD Fab 36 hereby agrees to manufacture and sell Products to AMD Fab 36 Holding. **Products** within the meaning of this Agreement are all Wafers manufactured by AMD Fab 36. AMD Fab 36 further agrees that, during the term of this Agreement, unless AMD Inc., the limited partners of AMD Fab 36 and, prior to the Loan Agreement Termination Date, the Facility Agent, otherwise consent thereto, it shall not, directly or indirectly, (i) sell any Products or any other goods or services to any Person other than AMD Fab 36 Holding, AMD Inc. or one or more of AMD Inc.'s Subsidiaries under any circumstances, or (ii) engage in any activities other than (w) construction of the Plant, (x) manufacture and sale of Products to be Shipped pursuant to this Agreement, (y) research, development and further development of the underlying technologies to the industrial production stage, and (z) activities reasonably incidental to any of the foregoing.

In the event that a further industrial manufacturing partner is admitted to AMD Fab 36, the exclusivity shall terminate with respect to manufacturing capacity of the Plant in excess of capacity dedicated to production of Wafers pursuant to this Agreement and the Parties shall agree to modify this Agreement accordingly.

(b) On the terms and subject to the conditions of this Agreement, AMD Fab 36 Holding hereby agrees to purchase from AMD Fab 36 all Products and to pay for all the Products Shipped to it the purchase price determined on a "cost-plus" basis pursuant to Article II.

(c) AMD Fab 36 Holding shall from time to time provide, or shall arrange for AMD Inc. or one or more of its Subsidiaries to provide, in particular, but not only under the Management Service Agreement, to AMD Fab 36 technical assistance as required in Article III (including the disclosure stated therein). Irrespective of any fault, AMD Fab 36 Holding warrants by means of an independent promise of warranty pursuant to Section 311 para. 1 German Civil Code that Wafers which meet the requirements can be manufactured in a timely manner with the provided technical assistance and the rights on intellectual property granted according to Section 3 b) of the License Agreement and the technical documentation. The exclusive legal consequence of the warranty irrespective of fault is that AMD Fab 36 Holding cannot invoke bad performance/non-performance by AMD Fab 36; such warranty has no other legal consequences.

Without limiting the generality of the foregoing, the Know-how to be provided pursuant to this Section 1.01(c) and Article III shall include such of the "Specific Results" (as such term is defined in the JDA), as are necessary or, in the reasonable opinion of AMD Inc., desirable, to enable AMD Fab 36 to manufacture Products on a timely basis, in accordance with the Specifications for the relevant Product. Any disclosure of Know-how and Specifications pursuant to this Section 1.01(c) or Article III (including, without limitation, Know-how consisting of Specific Results and Know-how disclosed by way of the furnishing of technical assistance) to AMD Fab 36 by or on behalf of AMD Fab 36 Holding shall be subject to the License Agreement.

---

**Section 1.02. Compliance with Laws and Required Permits.**

(a) AMD Fab 36 shall, at its cost and expense, use commercially reasonable efforts to (i) comply with all applicable Laws relating to the manufacture and the sale of the Products, and (ii) obtain all requisite consents, authorizations, permits and approvals for the manufacturing and sale to AMD Fab 36 Holding and the sale by AMD Fab 36 Holding to AMD Inc. of the Products from each governmental authority having jurisdiction over the manufacture and sale of the Products by AMD Fab 36 and AMD Fab 36 Holding; provided, however, that AMD Fab 36 shall not be responsible for obtaining any consents, authorizations, permits or approvals in connection with the import of Products into any territory outside Germany unless expressly otherwise agreed by AMD Fab 36; (iii) Irrespective of any fault, AMD Fab 36 Holding warrants by means of an independent promise of warranty pursuant to Section 311 para. 1 German Civil Code that neither the manufacture nor the distribution of the Products is conflicting with German law. The exclusive legal consequence of the warranty irrespective of fault is that AMD Fab 36 Holding cannot invoke bad performance/non-performance by AMD Fab 36; such warranty has no other legal consequences.

**Section 1.03. Quality of Products; Inspection and Rejection; Replacement Products.** Without prejudice to AMD Fab 36 Holding's obligation to make payment for Products Shipped pursuant to Section 2.06 and Section 2.07:

(a) AMD Fab 36 shall use all reasonable efforts to ensure that each Product Shipped meets the Specifications for that Product. In order to assist AMD Fab 36 in such efforts and for the purpose of assuring to AMD Fab 36 Holding the quality of the Products required under this Agreement, AMD Fab 36 shall permit the duly authorized representatives of AMD Fab 36 Holding and/or of AMD Inc. and its Subsidiaries, at any time during normal working hours and on reasonable notice, to inspect any premises of AMD Fab 36, and shall use all reasonable efforts to permit such representatives, at such time and on such notice, to inspect any premises of any third party where any of the Products, or any labeling or packaging for them, are manufactured by or for AMD Fab 36.

(b) AMD Fab 36 Holding shall promptly notify AMD Fab 36 in writing should the quality of the Products Shipped vary materially from the typical quality of the four previous shipments or, in the case of the first four shipments, from the quality of the previous shipments. In such event, AMD Fab 36 shall use its reasonable commercial efforts to restore the quality of the Products delivered hereunder to again meet such typical quality as soon as possible.



ARTICLE II

**Purchase Price and Delivery of Products**

**Section 2.01. Descriptive Overview of Product Pricing.** Without derogating from Sections 2.02 through 2.07 hereunder:

From and after the Effective Date AMD Fab 36 Holding shall purchase all Products which it orders from AMD Fab 36 and are Shipped by AMD Fab 36 in accordance with the requirements of this Agreement. The purchase price for the Products will be set at a price per Wafer which will be determined on a “cost-plus” basis for any month in accordance with the Section 2 hereinafter (“**Selling Price Per Wafer**”).

For all Products Shipped during any Month, AMD Fab 36 Holding shall make payments to AMD Fab 36 based on the Selling Price Per Wafer. Within 25 days after the end of each Month, other than one in which no Products are Shipped, AMD Fab 36 shall determine the Selling Price Per Wafer for such Month on the basis of its Total Costs actually incurred during that Month and the Applicable Percentage in accordance with Section 2.02. The parties acknowledge that this pricing mechanism may have the result of dictating a high price per Wafer for any Month in which only relatively few Wafers are Shipped and that after the Effective Date it will result in a full cost reimbursement during each year.

**Section 2.02. Definition of Selling Price Per Wafer.**

(a) Promptly, but in any event not later than 25 days after the end of each Month, the Selling Price Per Wafer for that Month shall be calculated in accordance with the formula contained in Section 2.02(b). Such calculation shall be based on the Total Costs actually incurred during such Month and the Actual Volume for such Month.

(b) For any Month the Selling Price Per Wafer shall be calculated in accordance with the following formula:-

$$\text{Selling Price Per Wafer} = \frac{\text{Applicable TC x Percentage}}{\text{AV}}$$

where:

“**Applicable Percentage**” shall be 110%;

“**AV**” means the Actual Volume for that Month;

“**TC**” means AMD Fab 36’s Total Costs (as defined in Annex 1) for or in respect of that Month.

**Section 2.03. Advance Payment Adjustment to Reimburse Total Costs in Certain Months during which no Wafers are Shipped.** For any Month after the Effective Date during which no Products are Shipped, promptly after the end but in any event not later than 30 days after such Month, AMD Fab 36 Holding shall make a creditable but not repayable advance payment in the amount of AMD Fab 36's Total Costs multiplied by the Applicable Percentage (the "**Advance Payment Adjustment Amount**") regardless of further Wafer Shipments.

If Wafers are again Shipped in any Month thereafter, the Total Costs of AMD Fab 36 shall be increased for that Month by the Total Costs of all preceding Months during which no Wafers were Shipped; the Advance Payment Adjustment Amounts shall be set-off against the payment to be made for such Month (confer definition of Total Costs in Annex 1, lit (g)).

**Section 2.04. Annual Compensation for Certain Administrative Costs.** AMD Fab 36 Holding shall compensate AMD Fab 36 for any administrative costs, including without limitation bookkeeping, legal and accounting costs, incurred by AMD Fab 36 from time to time for the direct benefit of AMD Fab 36 Holding, as follows. The parties agree that the amount payable by AMD Fab 36 Holding to AMD Fab 36 under this Section 2.04 shall be Euro 25,000 per annum for each Fiscal Year (which amount shall be pro-rated for any portion of a Fiscal Year) from the date hereof. Such payment shall be made not later than 30 days after the end of each Fiscal Year.

**Section 2.05. Shipping Terms.** AMD Fab 36 shall deliver the Products purchased hereunder from Dresden, Germany. AMD Fab 36 will arrange all freight, trucking and insurance. The costs for transportation and insurance will – as far as applicable - be separately regulated by the parties on a case-by-case basis.

**Section 2.06. Payments; Set Off.**

(a) AMD Fab 36 Holding shall pay to AMD Fab 36 the Selling Price Per Wafer for all Products Shipped by AMD Fab 36 within 30 days after receipt of invoices denominated in Euro from AMD Fab 36 in accordance with this Section 2.06. AMD Fab 36 shall be entitled to issue invoices to AMD Fab 36 Holding on a monthly basis. Payment for all other amounts due hereunder from either party (including any adjustment amount) shall be unconditionally due on or before the date specified in this Agreement for such amount.

(b) All amounts under this Agreement not paid when due from AMD Fab 36 Holding shall bear interest at the rate of 3% above the three-month EURIBOR per annum on a pro rata temporis basis. Such interest shall be due and payable at the end of each calendar month.

(c) Any amounts that are due from AMD Fab 36 to AMD Fab 36 Holding hereunder shall be payable only in the form of credit against amounts owed or to be owed by AMD Fab 36

Holding to AMD Fab 36 under this Agreement, except to the extent provided in Section 3.04 in connection with the Fab 36 Management Service Agreement. Any amount that is due from AMD Fab 36 Holding to AMD Fab 36 hereunder may be set-off against any payment then due under Sections 3, 5.02, or the Fab 36 Management Service Agreement, from AMD Fab 36 to AMD Fab 36 Holding.

(d) To secure the payment claims of AMD Fab 36, AMD Fab 36 Holding, here and now, assigns to AMD Fab 36 its payment claims against AMD Inc. under the Fab 36 Holding Cost Plus Reimbursement Agreement attached hereto as Annex A (including damage claims in case that, in the event of bankruptcy of AMD Inc., the trustee in bankruptcy of AMD Inc. or any other person with similar authority does not continue the Fab 36 Holding Cost Plus Reimbursement Agreement, regardless of whether such damage claims result under German or U.S. state or federal law).

**Section 2.06 a). Assignment of Damage Claims.**

(a) AMD Fab 36 Holding undertakes to purchase damage claims asserted by AMD Fab 36, which reduced the Total Costs pursuant to Section (6) (b) of Annex 1, if and to the extent that neither the damaging party nor an insurer makes any payment on account of such claims by the end of the second month after the month in which the Total Costs have been reduced. This purchase obligation does not apply in case of damage claims of less than 100,000.00 EUR.

(b) The purchase price of the damage claim shall correspond to the claim asserted against the third party and shall be included by AMD Fab 36 in the next invoice after arising of the purchase obligation.

(c) The assignment shall take effect at the time of sale; however, AMD Fab 36 is hereby granted authority of collection subject to any other regulation in the individual case. In the event that the assignment of the damage claim is excluded, AMD Fab 36 shall assert the claim in its own name and for the account of AMD Fab 36 Holding. It shall comply with the instructions given by AMD Fab 36 Holding in this connection.

**Section 2.07. Method of Payment.** Payments under this Agreement from AMD Fab 36 Holding to AMD Fab 36, if made other than by set-off permitted by Section 2.06, shall be deposited into an account of AMD Fab 36 at Dresdner Bank AG, Dresden Branch or such other account of AMD Fab 36 specified by AMD Fab 36 with the prior written consent of the Facility Agent (a copy of which consent shall be delivered by AMD Fab 36 to AMD Fab 36 Holding) with not less than 15 days written notice to AMD Fab 36 Holding, and all such payments shall be made in Euro, or in US-Dollar, or a combination of Euro and US-Dollar, in each case at the option of AMD Fab 36. The relevant US-Dollar amount results from the conversion of Euro to US-Dollar at the Facility Agent's spot rate of exchange as in effect on the date of the relevant invoice.

**Section 2.08. Adjustments for Changes in Laws or German GAAP.** In the event that there is a change in applicable Law or in German GAAP, and such change results in (i) payments

due from AMD Fab 36 Holding to AMD Fab 36, or due from AMD Fab 36 to AMD Fab 36 Holding (as the case may be) being materially different in aggregate amount or (ii) the timing of the receipt of such payments being materially different from the payments contemplated by this Article II, the affected party shall promptly notify the other party, AMD Inc. and the Facility Agent, and AMD Fab 36 Holding and AMD Fab 36 shall negotiate in good faith with a view to agreeing to such reasonable amendments to this Article II and the definitions used therein (which amendments shall be made only with the prior written consent of the Facility Agent) as are necessary as a result of such change. In order to restore the position contemplated by this Article II in the event AMD Fab 36 Holding and AMD Fab 36 fail to reach agreement on such amendments within 30 days of becoming aware of such change, or if the Facility Agent reasonably withholds its consent to any proposed amendments, all payments under this Article II shall be calculated without giving effect to such change. For avoidance of doubt, any amendments of the applicable law or of the German GAAP must not lead to a reduction of the cost basis of Total Costs.

**Section 2.09. Product Warranty.** Subject to Section 2.10, AMD Fab 36 represents and warrants that all Products sold to AMD Fab 36 Holding pursuant to this Agreement shall conform in all material respects to the Specifications for such Products and, if expressly agreed by AMD Fab 36 in writing in advance, to any specific changes thereto.

**Section 2.10. Disclaimer.** THE WARRANTY CONTAINED IN SECTION 2.09 IS THE SOLE AND EXCLUSIVE WARRANTY AS TO THE PRODUCTS AND IS EXPRESSLY IN LIEU OF ANY EXPRESS OR IMPLIED WARRANTIES, IN FACT OR IN LAW, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY SIMILAR WARRANTIES IMPLIED BY APPLICABLE LAW. REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS SHALL BE AMD FAB 36 HOLDING'S EXCLUSIVE REMEDY WITH RESPECT TO DEFECTIVE PRODUCTS. AMD FAB 36 ASSUMES NO LIABILITY IN TORT OR STRICT LIABILITY, NOR SHALL AMD FAB 36 BE LIABLE TO AMD FAB 36 HOLDING OR ANY AFFILIATE THEREOF FOR LOSS OR USE OF PRODUCTS OR ANY OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY AMD FAB 36 HOLDING OR ANY SUBSIDIARY OR AFFILIATE THEREOF. IN NO EVENT SHALL THE LIABILITY OF AMD FAB 36 ARISING IN CONNECTION WITH ANY PRODUCTS SOLD HERUNDER EXCEED THE PURCHASE PRICE FOR SUCH PRODUCTS.

### **ARTICLE III**

#### **Technical Assistance**

##### **Section 3.01. Provision of Know-how and Advice by or on Behalf of AMD Fab 36 Holding to AMD Fab 36.**

(a) AMD Fab 36 Holding shall from time to time disclose, or shall arrange for AMD Inc. or one or more Subsidiaries of AMD Inc. to disclose, to AMD Fab 36 such of the Know-how and Specifications of AMD Inc. and its Subsidiaries (or which may be used by AMD Inc. or its Subsidiaries), and any Improvements to such Know-how and Specifications made by AMD

---

Inc. or one or more of its Subsidiaries after such disclosure, as is necessary or, in the judgment of AMD Inc. or the Subsidiary of AMD Inc. making such disclosure, reasonably desirable to enable AMD Fab 36 to manufacture Products on an efficient and timely basis in accordance with the Specifications for the relevant Product (such Know-how, Specifications and Improvements together being the “**Intellectual Property**”). AMD Fab 36 Holding shall from time to time provide, or shall arrange for AMD Inc. to provide, one (1) copy (or if requested by AMD Fab 36, two (2) copies), on a non-exclusive basis, of any Technical Documentation for such Intellectual Property in the possession of AMD Inc. or one or more of its Subsidiaries. Nothing in this Article III shall require AMD Inc. or any Subsidiary of AMD Inc. disclosing Intellectual Property to create Technical Documentation unless required for the manufacture of Wafer hereunder.

(b) AMD Fab 36 Holding agrees to advise, or to arrange for AMD Inc. or one or more Subsidiaries of AMD Inc., to advise AMD Fab 36, upon AMD Fab 36’s request in writing, in relation to (i) the configuration of the equipment installed or to be installed at the Plant and used for the production of each Product, and (ii) the requirements for such configuration, the installation of the equipment and the machinery in the Plant necessary for the manufacture of such Products and the calibration and testing of such equipment and machinery.

(c) AMD Fab 36 Holding shall from time to time permit, or shall arrange for AMD Inc. to permit, AMD Fab 36 to make such number of copies of the Technical Documentation, or any part thereof, provided or disclosed to it hereunder as AMD Fab 36 may require for the purposes of this Agreement.

(d) AMD Fab 36 Holding shall from time to time notify, or shall arrange for AMD Inc. to notify, AMD Fab 36 promptly of any material errors in the Intellectual Property or Technical Documentation provided or disclosed to AMD Fab 36 hereunder or in connection herewith upon AMD Inc. or one or more of its other Subsidiaries becoming aware thereof and, to the extent AMD Inc. or one or more of its Subsidiaries develops or obtains a correction for such error, shall promptly provide, or shall arrange for AMD Inc. to promptly provide, to AMD Fab 36 the Intellectual Property and/or Technical Documentation to enable AMD Fab 36 to correct such error.

(e) Without derogating from AMD Fab 36 Holding’s obligation to provide, or to arrange for AMD Inc. to provide, disclosure to AMD Fab 36 of such of the Know-how and Specifications of AMD Inc. and its Subsidiaries, or which AMD Inc. or its Subsidiaries have the right to use, as is necessary to enable AMD Fab 36 to manufacture Products hereunder, but notwithstanding any other provision of this Section 3.01, AMD Fab 36 Holding shall not be required to disclose or arrange for AMD Inc. to disclose any Intellectual Property or Technical Documentation which AMD Inc. and its Subsidiaries – despite their best efforts - do not have a right to disclose or the disclosure of which would require the payment of compensation to a third party. Own acquisition by AMD Fab 36 is not precluded thereby.

---

**Section 3.02. Expert Support, Training and Technical Assistance.**

(a) AMD Fab 36 Holding shall, upon AMD Fab 36's request in writing, provide, or arrange for AMD Inc. or one or more Subsidiaries of AMD Inc. to provide, to AMD Fab 36, at the Plant, technical discussions, lectures, guidance and/or technical training in order to enable AMD Fab 36 to use, for the purposes of this Agreement, the Intellectual Property and Technical Documentation disclosed or to be disclosed to AMD Fab 36 hereunder or in connection herewith and under or in connection with the License Agreement. Such discussions, lectures, guidance and training shall be conducted by AMD Fab 36 Holding and/or AMD Inc. personnel who are qualified to provide advice with respect to the relevant Intellectual Property and Technical Documentation ("**Qualified Personnel**").

(b) The timing of visits of such AMD Fab 36 Holding and/or AMD Inc. personnel shall be arranged by agreement between AMD Fab 36 Holding and AMD Fab 36.

(c) AMD Fab 36 Holding shall, upon AMD Fab 36's request in writing, provide, or arrange for AMD Inc. to provide, to AMD Fab 36, at the Plant, all technical assistance necessary to remedy a Production Problem.

**Section 3.03. Access to Comparable Plants.** AMD Fab 36 Holding shall arrange for AMD Inc. to permit or to cause AMD Saxony to permit AMD Fab 36 to send, at the expense of AMD Fab 36 or as otherwise agreed by AMD Inc., employees of AMD Fab 36 to visit AMD Saxony's Wafer Fabrication Plant in Dresden, Germany known as ("**Fab 30**") for so long as such plant is owned by AMD Saxony or another Subsidiary of AMD Inc. and AMD Inc. holds a direct or indirect controlling interest in AMD Saxony, at reasonable times for the purpose of witnessing and training in the use of any of the Intellectual Property and Technical Documentation provided or disclosed to it hereunder. AMD Fab 36 Holding shall upon AMD Fab 36's request in writing, provide, or arrange for AMD Inc. to provide, to such AMD Fab 36 employees at such Wafer Fabrication Plants technical discussions, lectures, guidance and/or technical training by Qualified Personnel in order to enable such AMD Fab 36 employees to understand the usage being made at such Wafer Fabrication Plants of the relevant Intellectual Property and Technical Documentation.

**Section 3.04. Charge for Technical Assistance.**

(a) The remuneration for services provided under this Section 3 shall be paid by AMD Fab 36 directly to AMD Inc. (real contract in favor of a third party) in accordance with the Fab 36 Management Service Agreement.

(b) The foregoing notwithstanding, the parties agree that, without prejudice to the last sentence of Section 1.01(c) or to the License Agreement, any Intellectual Property provided in any form to AMD Fab 36 for its use hereunder is provided at no charge.

**ARTICLE IV**

**Accounting Reports: Other Reports:  
Right of Inspection By or On Behalf of AMD Fab 36 Holding**

**Annual Accounting Reports from AMD Fab 36.** AMD Fab 36 Holding and its duly authorized representatives (which may include duly authorized representatives of AMD Inc. or a Subsidiary of AMD Inc.) and, if the Loan Agreement Termination Date has not yet taken place, the Facility Agent shall at all reasonable times have access to the books and accounts kept by AMD Fab 36 and annually upon the closing of the Fiscal Year all such books and accounts shall be audited by a firm of independent and internationally known public accountants selected by AMD Fab 36 with the approval of AMD Fab 36 Holding and, if the Loan Agreement Termination Date has not yet taken place, the Facility Agent (the consent of the Facility Agent not to be unreasonably withheld). A copy of each such report of audit shall be sent to AMD Fab 36 Holding and, prior to the Loan Agreement Termination Date, the Facility Agent. AMD Fab 36 Holding and its duly authorized representatives (which may include duly authorized representatives of AMD Inc. or of a Subsidiary of AMD Inc.) shall also have the right to examine and inspect at any reasonable time all properties and operations of AMD Fab 36 to which this Agreement relates. The rights of Leipziger Messe GmbH and of M+W Zander Fünfte Verwaltungsgesellschaft mbH (“**M+W**”) as direct or indirect partners of AMD Fab 36 pursuant to Article 9.3 of the AMD Fab 36 Limited Partnership Agreement remain unaffected thereby.

**ARTICLE V**

**Effectiveness; Termination**

**Section 5.01. Effectiveness; Termination.**

(a) This Agreement shall become effective on the date hereof and (unless otherwise extended as hereinafter provided) shall terminate on the date which is the earlier of (i) the effective date of the ordinary notice of termination given by any of the Parties with three months’ notice, such effective date being the end of any calendar month, however, not before the Loan Agreement Termination Date and (ii) the Termination Date as defined in subsection (b) below. No notice of ordinary termination may be given by AMD Fab 36 Holding as long as Leipziger Messe GmbH and/or M+W are direct or indirect partners of AMD Fab 36.

(b) Each of the events described in this Section 5.01(b) shall constitute good cause for terminating this Agreement. If a good cause for terminating this Agreement pursuant to clauses (iv) through (xi) hereinafter has occurred and is continuing, AMD Fab 36 may give notice of termination for good cause. Prior to the Loan Agreement Termination Date, the Security Agent pursuant to and in accordance with the Security Documents may, in the event of a good cause pursuant to any of the clauses (viii), (x) or (xi), give notice of termination in all cases in accordance with the power of attorney attached as Annex 2. In the event of a good cause pursuant to any of the clauses (iv), (v) or (vii), AMD Inc. shall be entitled to give notice of such termination in all cases in accordance with the power of attorney attached hereto as Annex 3.

The right of AMD Fab 36 to revoke AMD Inc.'s power of attorney for good cause shall remain unaffected. In addition, this Agreement shall automatically terminate (without any requirement for any action by any party hereto) immediately upon the occurrence of the good cause for terminating this Agreement described in clauses (i) through (iii) below. Upon termination for good cause, this Agreement shall terminate on the date any such notice is given; upon automatic termination, this Agreement shall terminate upon the occurrence of the event (the respective date being the "**Termination Date**"). Good causes for terminating this Agreement are as follows:

(i) the expropriation or condemnation of the Plant or any substantial part of the assets or business of AMD Fab 36 or AMD Fab 36 Holding by any Governmental Authority, or the involuntary suspension, or curtailment below seventy-five percent of capacity, by AMD Fab 36 of the operation of the Plant for six months or more as a result of any change in or introduction of any Law occurring after the date hereof;

(ii) AMD Inc. or AMD Fab 36 Holding being required by any Governmental Authority to divest itself of all or a substantial portion of its direct or indirect interest in AMD Fab 36, or AMD Fab 36 being required by any Governmental Authority to divest itself of all or a substantial portion of the Plant;

(iii) the destruction of the Plant or a substantial portion thereof and a decision by AMD Fab 36 not to rebuild the same after having received insurance proceeds in respect of such destruction in an amount at least equal to the depreciated book value of such Plant or substantial portion thereof;

(iv) acceleration of the liabilities of AMD Fab 36 after expiration of an applicable additional period as a result of occurrence of an event as specified in the Section of the Loan Agreement relating to the termination of the loan entitling the Banks to terminate the Loan Agreement and/or if the Facility Agent, the Security Agent or any of the Banks asserts a right under any of the Security Documents (as defined in the Loan Agreement);

(v) the involuntary (including without limitation as a result of enforcement of any rights of security granted in shares of AMD Fab 36 Holding and/or AMD Fab 36 or performance of any undertakings to transfer such shares made to secure obligations of AMD Fab 36 Holding and/or AMD Fab 36) transfer of a controlling interest in AMD Fab 36 Holding and/or AMD Fab 36 from AMD Inc. and its Subsidiaries to one or more third parties is threatened and bankruptcy proceedings are not opened over the assets of AMD Fab 36 Holding and/or AMD Inc. within one (1) month from transfer of such controlling interest;

(vi) [deliberately blank];

(vii) any event which (A) results in the termination of AMD Inc.'s rights to disclosure to AMD Fab 36 as contemplated by Section 1.01 and Article III, or (B) otherwise terminates or makes impracticable the manufacture of Wafers as contemplated hereunder and bankruptcy proceedings are not opened over the assets of AMD Fab 36 Holding and/or AMD Inc. within one (1) month from occurrence of the event;



(viii) failure of AMD Fab 36 Holding or AMD Inc. to make any payment required from it hereunder this Agreement or under the AMD Fab 36 Holding Cost Plus Reimbursement Agreement within forty-five (45) days of the date due therefor or default by AMD Fab 36 Holding or AMD Inc. in the performance of or compliance with any other term contained in this Agreement or any such other agreement and such default shall not have been remedied within thirty (30) days after receipt of notice of such default from AMD Fab 36, or if the Loan Agreement Termination Date has not yet taken place, the Facility Agent and bankruptcy proceedings are not opened over the assets of AMD Fab 36 Holding and/or AMD Inc. within one (1) month from fulfillment of the aforesaid conditions.

(ix) a [deliberately blank];

(x) execution is issued (*Einleitung der Zwangsvollstreckung*) against all or a substantial part of the assets of AMD Fab 36 Holding unless such execution is withdrawn within three weeks of the issuance thereof; realization of such execution; or the realization of execution on the equity shares in AMD Fab 36 owned by AMD Fab 36 Holding and bankruptcy proceedings are not opened over the assets of AMD Fab 36 Holding and/or AMD Inc. within one (1) month from fulfillment of the aforesaid conditions; .

(xi) the discontinuance of payments generally (*Zahlungseinstellung*) by AMD Fab 36 Holding and bankruptcy proceedings are not opened over the assets of AMD Fab 36 Holding and/or AMD Inc. within one (1) month from discontinuance of payments;

Notice of termination may be given within forty-five (45) days from occurrence of the respective termination event. The right to assert statutory damage claims (Section 314 (4) BGB [German Civil Code] in conjunction with Sections 280 et seq. BGB) on the ground of termination of this Agreement for the reasons set out in sub-sect. b) above remains unaffected.

**Section 5.02. Rights Upon Termination.**

(a) Promptly, but in no event later than 20 days following the Termination Date,

(i) the actual Selling Price for the Month ending on the Termination Date shall be calculated in accordance with Section 2.02; and

(ii) if no Products were Shipped in the Month ending on the Termination Date, the final Advance Payment Adjustment Amount for that Month shall be calculated in accordance with Section 2.03.

(b) Upon termination of this Agreement, AMD Fab 36 Holding shall purchase all inventory and work-in-process of AMD Fab 36 as of the Termination Date. The purchase price shall be equal to the value thereof as shown in the books of AMD Fab 36 in accordance with German GAAP.

---

(c) Upon termination of this Agreement, all amounts shall be offset between the parties and the balance shall be settled by payment.

**Section 5.03. Survival.** The provisions of Sections 2.09 and 2.10, 5.2, 6.02, 6.03 and 6.06 shall survive any termination of this Agreement.

## **ARTICLE VI**

### **Miscellaneous**

#### **Section 6.01. Force Majeure.**

(a) A party to this Agreement shall not be liable for the consequences of any failure to perform, or default in performing, any of its obligations, other than its payment obligations, under this Agreement if that party can show that such failure is caused by Force Majeure. In the event that no Wafers can be manufactured due to Force Majeure, the payment obligations hereunder shall continue to be owed.

(b) In case of subsection (a), the said failure shall not be considered non-compliance with any term or condition of this Agreement, and all the obligations (other than payment obligations) and times which because of such Force Majeure could not be fulfilled shall be deemed to have been suspended while the Force Majeure continues. In addition, the party for whom such obligations and/or times have been suspended shall be entitled to take reasonable steps during the pendency of the relevant Force Majeure to limit its losses resulting from such Force Majeure, and following the occurrence of such Force Majeure such obligations and/or times shall continue to be suspended for such further reasonable period as is necessary for such party to restore its capacity to perform such obligations and/or meet such times.

**Section 6.02. Applicable Law.** This Agreement is governed by the law of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 is expressly excluded.

#### **Section 6.03. Dispute Resolution.**

a) The parties shall endeavor to reach an amicable settlement of any dispute arising out of or in connection with this Agreement and its implementation, including any question regarding its existence, validity, termination or its performance, or in connection with arrangements regarding the performance of this Agreement.

b) If any party declares that a reasonable attempt at amicable settlement of a dispute mentioned in sub-section a) has failed, such dispute shall be finally resolved by arbitration, to the exclusion of the courts of regular jurisdiction, under the Rules of Arbitration (*Schiedsgerichtsordnung*) of the German Arbitration Board ("Deutsche Institution für Schiedsgerichtswesen e.V."), by three arbitrators. The place of arbitration shall be Dresden, Germany. The German Code of Civil Procedure shall apply where the Rules of Arbitration are silent.

---

c) The language to be used in the arbitration proceedings shall be German and all documents written in a language other than German shall be translated into the German language for the arbitration proceedings, unless otherwise decided by the parties to the arbitration proceedings.

d) The arbitral awards shall be substantiated in writing. The arbitration tribunal shall decide on the matter of costs of the arbitration and on the allocation of expenditure among the respective parties to the arbitration proceedings.

**Section 6.04. Definitions**

A list with definitions of the terms used in this Agreement is attached hereto. It is the will of the parties hereto that each of the terms listed in the Annex 1 has the meaning specified there unless the context requires a different interpretation.

**Section 6.05. Assignment**

None of the parties hereto shall have the right to assign its rights hereunder without the prior written consent of the other party hereto, of AMD Inc., of Leipziger Messe GmbH and of M+W as long as they are limited partners of AMD Fab 36 and, prior to the Loan Agreement Termination Date, of the Security Agent. However, AMD Fab 36 may assign its rights under this Agreement to the Security Agent and/or the Banks as security for obligations of AMD Fab 36 under the Loan Agreement, and the Security Agent may in turn assign such rights to any direct transferee of the Plant in the context of the proper realization of such security.

**Section 6.06. Language**

The German version of this Agreement shall be controlling.

**Section 6.07 Final Provisions**

a) No modifications or amendments to this Agreement shall be binding unless in writing. This requirement of written form may only be waived in writing.

b) If present or future terms of this Agreement are invalid or unenforceable in whole or in part or lose their validity or enforceability at a later date, this shall not affect the validity of the remaining provisions hereof. The same shall apply insofar as it transpires that there is a gap in this agreement. The invalid or unenforceable provision shall be replaced, or the gap filled, by a reasonable provision which, to the extent legally permissible, comes closest to what the contracting parties intended or would have intended in accordance with the meaning and purpose of this Agreement, had they considered the point upon

conclusion hereof. This also applies if the invalidity of a provision results from a degree of performance standardized hereunder (set period, date); in such cases a legally permissible degree of performance or time (set period, date), coming as close as possible to the intentions, shall replace what was agreed. In case of disputes arising among the parties hereto due to subsections a) and b) above, the arbitration tribunal (Section 6.03) shall be entitled to determine with binding force the provision which is to apply thereunder.

Dresden, April 21, 2004

/s/ Dr. Hans-Raimund Deppe

---

AMD Fab 36 Limited Liability  
Company & Co. KG, represented by  
AMD Fab 36 LLC  
Dr. Hans-Raimund Deppe  
Manager

/s/ Dr. Hans-Raimund Deppe

---

AMD Fab 36 Holding GmbH  
Dr. Hans-Raimund Deppe  
Managing Director

**Definitions**

- (1) “**Actual Volume**” means, with respect to any Month, the actual number of Wafers Shipped by AMD Fab 36 to AMD Fab 36 Holding during that Month;
- (2) “**Banks**” means the banks from time to time party to the Loan Agreement;
- (3) “**Effective Date**” means the first day of AMD Fab 36’s first Fiscal Quarter during which commercial shipment of Products occurs, however no later date than January 1, 2006;
- (4) “**Facility Agent**” means Dresdner Bank Luxembourg S.A., as Facility Agent under the Loan Agreement, including any successor to Dresdner Bank Luxembourg S.A. in that capacity;
- (5) “**Force Majeure**” means with respect to AMD Fab 36 or AMD Fab 36 Holding, as the case may be, an event which is not within the reasonable control of the Person seeking to rely on the existence of Force Majeure, where the adverse effect of such event on such Person’s compliance with its obligations under this Agreement is not preventable by such Person using all reasonable care and diligence. Such events may include, without limitation, the following: acts of war (whether declared or undeclared), invasion, armed conflict, acts of one or more enemy of the United States of America, Germany or any other country or jurisdiction; blockade or embargo, revolution, riot, bombs, insurrection or other civil disturbance, sabotage, terrorism or the threat of any of the foregoing, nuclear explosion, radioactive or chemical contamination or ionizing radiation, strikes, lockouts, industrial action or labor disputes, any effect of the natural elements including without limitation lightning, fire, earthquake, flood, strike and other unusual or extreme adverse weather or environmental conditions or actions of the elements, epidemic or plague, loss of or damage to the Plant and/or machinery, equipment or materials at, for or in transit to the Plant and any events or circumstances analogous to any of the above;

- 
- (6) “**German GAAP**” means accounting principles and practices generally accepted in Germany, consistently applied throughout the periods involved;
  - (7) “**Improvements**” means any development, enhancement, improvements, upgrades, modifications and updates (including error corrections), translations and derivative works;
  - (8) “**JDA**” means the “S” Process Development Agreement dated as of December 28, 2002 between AMD Inc. and International Business Machines Corporation, as amended, modified or supplemented from time to time;
  - (9) “**Know-how**” means know-how, show-how, methods, techniques, procedures, formulations, formulae, assembly, installation, operating and quality control procedures and manuals, quality control standards, technical information, technical and product specifications, equipment requirements, writings, plans, drawings, designs, layouts, data, equipment descriptions, masks, mask works, systems, toolings, software, data, copyrightable material, trade secrets, inventions (whether patentable or not), improvements, developments, discoveries and any other information or intellectual property rights which lie outside the domain of public knowledge, in whole or in part;
  - (10) “**License Agreement**” means the License Agreement among AMD Inc., AMD Fab 36 Holding and AMD Fab 36 entered into concurrently herewith, as such License Agreement may be amended, supplemented or otherwise modified from time to time;
  - (11) “**Loan Agreement**” means the EUR 700 million Syndicated Loan Agreement, signed on [ ], among AMD Fab 36, the Banks, the Facility Agent, the Security Agent and the Reporting Agent (Dresdner Bank AG and any successor to Dresdner Bank AG in that capacity), as such Loan Agreement may be amended, supplemented or otherwise modified from time to time;
  - (12) “**Loan Agreement Termination Date**” means the first day on which (i) all Obligations (under, and as defined in, the Loan Agreement) have been paid in full, and (ii) the Banks have no commitments under the Loan Agreement);
  - (13) [deliberately blank]

- 
- (14) “**Period**” means any Fiscal Quarter of AMD Fab 36 beginning with the Effective Date and quarters subsequent; provided that no Period shall extend beyond, and the final Period shall end on, the Termination Date;
  - (15) “**Plant**” means the advanced production facility to be constructed, owned and operated by AMD Fab 36 in Dresden, Germany to manufacture Wafers using high-volume semiconductor wafer fabrication processes;
  - (16) “**Production Problems**” means any circumstances other than those resulting from Force Majeure pertaining to AMD Fab 36, which prevent the manufacture or shipment of a Product by AMD Fab 36, including any temporary or permanent inability to apply or continue to apply Intellectual Property in the manufacture of such Product;
  - (17) “**Qualified Personnel**” has the meaning assigned to it in Section 3.02;
  - (18) [deliberately blank];
  - (19) “**Security Agent**” means Dresdner Bank AG, as security agent under the Loan Agreement, including any successor to Dresdner Bank AG in such capacity;
  - (20) “**Selling Price Per Wafer**” has the meaning assigned to it in Section 2.02(b);
  - (21) “**Shipped**” means, with respect to any Products and any Month, Products delivered by AMD Fab 36 pursuant to Section 2.05 during that Month in accordance with this Agreement;
  - (22) “**Specifications**” means, with respect to a Product, the tooling, masks, mask-works, specifications, blueprints, drawings, assembly instructions and other instructions required for the manufacture of that Product;
  - (23) “**Start-up Costs**” means the aggregate amount of Total Costs incurred by AMD Fab 36 prior to the Effective Date;
  - (24) “**Subsidiary**” means, with respect to any person, any other person of which more than 50% of the total voting power of shares of stock or other ownership interest entitled to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that person or one or more of the other Subsidiaries of that person are a combination thereof;

- 
- (25) “**Technical Documentation**” for any Know-how means manuals and other documentation in which such Know-how is recorded and all specifications, programs, software, formulae, drawings, sketches, plans, blueprints, design materials, manuals and other technical or organizational documentation for such Know-how;
- (26) “**Total Costs**” means, for any Month, all costs incurred, paid or accrued by AMD Fab 36 and included for that Month in the net income for the year/net loss for the year [Jahresüberschuss/Jahresfehlbetrag] in accordance with German GAAP (i.e., § 275 of the German Commercial Code (*Handelsgesetzbuch*)) except income and corporate income taxes, all as shown in the income statement of AMD Fab 36; provided that
- (a) German GAAP, solely for purposes of this definition, shall be applied according to the accounting options specified under items (i) through (x) of this definition below regardless of whether German GAAP is so applied in the income statement of AMD Fab 36;
  - (b) Total Costs shall be reduced by any revenue or income (other than revenue under this Agreement) accrued or received by AMD Fab 36, including damage claims asserted by AMD Fab 36 against third parties, which revenue or income shall include any income from capital accrued or received by AMD Fab 36 as well as net payments received in respect of hedging transactions.;
  - (c) Total Costs shall include all interest expense paid or accrued (owed) by AMD Fab 36, including all interest expense relating to loans to AMD Fab 36 from third parties. Total Costs shall not include any interest expense relating to loans to AMD Fab 36 from AMD Fab 36 Holding or AMD Inc. (“Intercompany Loans”); furthermore, Total Costs shall not include the profit shares of the silent partners;
  - (d) Total Costs shall not include any trade tax (*Gewerbesteuer*), any similar tax, or any tax levied or imposed in lieu of trade tax, including but not limited to municipal commercial tax (*Kommunale Wirtschaftssteuer*);
  - (e) Total Costs shall be reduced by any grants, subsidies and expense reimbursements received by AMD Fab 36 from the Republic of Germany,



---

the Sächsische Aufbaubank, the Free State of Saxony, the City of Dresden, or from any other Governmental Authority, and such reduction shall be made in the manner specified in (iv), (v) or (vi) below (as applicable).

- (f) Payments by AMD Fab 36 Holding under this Cost Plus Reimbursement Agreement shall not be considered as cost basis;
- (g) Total Costs for any Month after the Effective Date shall be increased by the amount of the Total Costs in the immediately preceding Month (if any) if no Products were shipped during such preceding Month (and the parties hereto acknowledge that the amount by which the Total Costs shall be increased pursuant to this clause (g) therefore corresponds to the aggregate Total Costs for all immediately preceding consecutive Months in which no Products were Shipped, in each case without giving effect to this clause (g));
- (h) Total Costs for each Month shall be (i) decreased for that Month by the amount by which the work-in-process and finished products inventory at the end of that Month exceeds the amount of the work-in-process and finished products inventory at the end of the immediately preceding Month, and (ii) increased for that Month by the amount by which the work-in-process and finished products inventory at the end of that Month is less than the amount of the work-in-process and finished products inventory at the end of the immediately preceding Month. In the case of finished products, the inventory change shall not exceed the production for one Month in each case;
- (i) For avoidance of doubt, Total Costs shall also include all expense reimbursements paid by AMD Fab 36 to AMD Fab 36 LLC, but shall not include compensation paid by AMD Fab 36 to the general partners of AMD Fab 36 for acting as general partner.

With reference to clause (a) of this definition above,

- (i) Start-up Costs will not be capitalized;

- 
- (ii) [deliberately blank]
  - (iii) exceptional depreciation in order to state fixed assets at a lower value, and reversals of such depreciation in the case that the reasons for an exceptional depreciation no longer exist, will be included;
  - (iv) revenues from investment grants (*Investitionszuschüsse*) and allowances (*Investitionszulagen*) will be allocated chronologically to the investments in buildings, machinery, tools and other equipment to which they relate. They will be amortized parallel to the depreciation of the corresponding fixed assets and so will reduce these depreciation costs;
  - (v) without limiting the generality of clause (a) of this definition, such amortization pursuant to (iv) above shall occur regardless of whether AMD Fab 36 elects to treat some or all of such grants and allowances as income in the year received for purposes of AMD Fab 36's financial statements;
  - (vi) all grants, allowances, subsidies, or expense reimbursements described in clause (e) of this definition but which are not investment grants (*Investitionszuschüsse*), allowances (*Investitionszulagen*) or research and development subsidies will reduce Total Costs in the Month received by the full amount received in that Month;
  - (vii) write-downs on current assets due to obsolescence or solvency reasons will be included;
  - (viii) [deliberately blank]
  - (ix) the deferred taxes as defined by Section 274 German Commercial Code [Handelsgesetzbuch] are not included;
  - (x) accruals for repairs and maintenance expenses, necessary demolition and/or dismantlement, environmental obligations and other future expenses (so-called Aufwandsrückstellungen, § 249 section 1 sentence 2 no. 1 of the German Commercial Code) will be included to the extent they are made in the financial statements of AMD Fab 36; and

- 
- (xi) it is made clear that expenses incurred for discharging warranty obligations vis-à-vis AMD Fab 36 Holding shall not reduce Total Costs;
  - (27) “**Wafer**” means a 300 mm silicon wafer on which integrated circuits, in particular, for microprocessor chips are fabricated.

---

**EXHIBIT I**

*Section 275 of the German Commercial Code*

- [1] The profit and loss statement shall be prepared in a vertical format according to the total cost procedure or the sales cost procedure. In so doing, the entries designated in Subsection 2 or 3 shall be shown separately in the sequence given there.
- [2] In using the total cost procedure, the following shall be shown:
1. Sales proceeds
  2. Increase or decrease in the inventory of finished products and work in progress
  3. Other capitalized own work
  4. Other operating income
  5. Material costs:
    - a) Costs of raw material, supplies, operating materials and acquired goods
    - b) Costs of acquired services
  6. Personnel costs:
    - a) Wages and salaries
    - b) Social security and expenses for old age pensions and support, noting the amount for old age pensions
  7. Depreciation and Amortization:
    - a) For intangible fixed assets and tangible assets as well as capitalized expenditures for starting up or expanding the business
    - b) For current assets to the extent that they exceed the corporation's usual depreciation or amortization
  8. Other operating expenses
  9. Income from participations, noting the amount from related enterprises
  10. Income from other securities and long-term loans, noting the amount from related enterprises
  11. Other interest and similar income, noting the amount from related enterprises
  12. Amortization of financial assets and of securities included in current assets

- 
13. Interest and similar expenses, noting the amount to related enterprises
  14. Results from ordinary business operations
  15. Extraordinary income
  16. Extraordinary expenses
  17. Extraordinary results
  18. Taxes on income and revenue
  19. Other taxes
  20. Annual surplus/annual deficit.
- [3] In using the sales cost method, the following shall be shown:
1. Sales proceeds
  2. Production costs for performance provided in achieving the sales proceeds
  3. Gross earnings from sales
  4. Selling expenses
  5. General administrative expenses
  6. Other operating income
  7. Other operating expenses
  8. Revenues from participations, noting the amount from related enterprises
  9. Income from other securities and long-term loans, noting the amount from related enterprises
  10. Other interest and similar income, noting the amount from related enterprises
  11. Amortization of financial assets and of securities included in current assets
  12. Interest and similar expenses, noting the amount to related enterprises
  13. Results of ordinary business operations
  14. Extraordinary income
  15. Extraordinary expenses
  16. Extraordinary results
  17. Taxes on income and revenue
  18. Other taxes
  19. Annual surplus/annual deficit.
- [4] Changes in the capital and earnings reserves may be shown in the profit and loss statement only after the entries "Annual surplus/annual deficit".

Annex 2

Power of Attorney for Security Agent

VOLLMACHT

Ich, der Unterzeichnende,

POWER OF ATTORNEY

I, the undersigned

**Dr. Hans-Raimund Deppe**

geschäftsansässig /with business address at

**Wilschdorfer Landstr. 101**

**D-01109 Dresden, Germany**

hier handelnd nicht im eigenen Namen, sondern als einzelvertretungsberechtigter  
Geschäftsführer für die

here acting, not for himself, but as Manager, authorized to act on his sole signature,  
of

**AMD Fab 36 LLC**

**Wilmington, Delaware, USA**

Hauptgeschäftsniederlassung / Main office:

**One AMD Place, Sunnyvale, California 94088, USA**

eine Gesellschaft nach dem Recht des Staates Delaware, USA, diese wiederum  
handelnd für die

a limited liability company organized and existing under the laws of the State of  
Delaware, USA, such company acting for

**AMD Fab 36 Limited Liability Company & Co. KG,**

**Wilschdorfer Landstr. 101**

**D-01109 Dresden, Germany**

erteile hiermit

hereby irrevocably authorize

unwiderruflich Einzelvollmacht, die AMD Fab 36 Limited Liability Company & Co. KG bei folgenden Angelegenheiten zu vertreten und Untervollmacht in demselben Rahmen zu erteilen:

Kündigung der AMD Fab X Kostenerstattungs-Vereinbarung zwischen AMD Fab 36 Holding GmbH und AMD Fab 36 Limited Liability Company & Co. KG vom 21. April 2004 aus wichtigem Grund bei Vorliegen eines Kündigungsgrundes nach Artikel V Ziffer 1 lit. b) (viii), (x) oder (xi) der AMD Fab X Kostenerstattungs-Vereinbarung.

Der Bevollmächtigte ist berechtigt, alle Handlungen vorzunehmen und alle Erklärungen abzugeben und entgegenzunehmen, die im Zusammenhang mit den vorgenannten Angelegenheiten notwendig oder sinnvoll sind.

Diese Vollmacht erlischt mit dem Ablaufdatum des Darlehensvertrages (wie in der AMD Fab X Kostenerstattungs-Vereinbarung in der jeweils geltenden Fassung definiert).

Diese Vollmacht unterliegt dem Recht der Bundesrepublik Deutschland. Die deutsche Fassung dieser Vollmacht soll im Fall von Widersprüchen oder Abweichungen die maßgebliche sein.

to represent AMD Fab 36 Limited Liability Company & Co. KG, acting singly, with respect to the following matters and to grant sub-power of attorney to the same extent:

Termination for good cause of the AMD Fab X Cost Plus Reimbursement Agreement between AMD Fab 36 Holding GmbH and AMD Fab 36 Limited Liability Company & Co. KG dated April 21, 2004 in the event of a good cause pursuant to any of the clauses 5.01 (b) (viii), (x) or (xi) of the AMD Fab X Cost Plus Reimbursement Agreement.

The representative shall be entitled to undertake any and all measures to make or receive any and all declarations that are necessary or appropriate in connection with the aforementioned matters.

This power of attorney expires on the Loan Agreement Termination Date (as defined in the AMD Fab X Cost Plus Reimbursement Agreement, as amended from time to time).

This power of attorney is subject to the Laws of the Federal Republic of Germany. The German language version shall be governing in the event of any dispute or ambiguity.

---

Dresden, 21. April 2004

---

Dr. Hans-Raimund Deppe  
Vice President und General Manager  
Geschäftsführer

13



Annex 3

Power of Attorney for AMD Inc.

VOLLMACHT

Ich, der Unterzeichnende,

POWER OF ATTORNEY

I, the undersigned

**Dr. Hans-Raimund Deppe**

geschäftsansässig /with business address at

**Wilschdorfer Landstr. 101  
D-01109 Dresden, Germany**

hier handelnd nicht im eigenen Namen, sondern als einzelvertretungsberechtigter  
Geschäftsführer für die

here acting, not for himself, but as Manager, authorized to act on his sole signature,  
of

**AMD Fab 36 LLC  
Wilmington, Delaware, USA**

Hauptgeschäftsniederlassung / Main office:  
**One AMD Place, Sunnyvale, California 94088, USA**

eine Gesellschaft nach dem Recht des Staates Delaware, USA, diese wiederum  
handelnd für die

a limited liability company organized and existing under the laws of the State of  
Delaware, USA, such company acting for

**AMD Fab 36 Limited Liability Company & Co. KG,  
Wilschdorfer Landstr. 101  
D-01109 Dresden, Germany**

erteile hiermit

hereby authorize

---

**Advanced Micro Devices, Inc.**  
One AMD Place,  
Sunnyvale, CA 94088, California

Einzelvollmacht, die AMD Fab 36 Limited Liability Company & Co. KG bei folgenden Angelegenheiten zu vertreten und Untervollmacht in demselben Rahmen zu erteilen:

Kündigung der AMD Fab X Kostenerstattungs-Vereinbarung zwischen AMD Fab 36 Holding GmbH und AMD Fab 36 Limited Liability Company & Co. KG vom 21. April 2004 aus wichtigem Grund bei Vorliegen eines Kündigungsgrundes nach Artikel V Ziffer 1 lit. b) (iv), (v) oder (vii) der AMD Fab X Kostenerstattungs-Vereinbarung.

Der Bevollmächtigte ist berechtigt, alle Handlungen vorzunehmen und alle Erklärungen abzugeben und entgegenzunehmen, die im Zusammenhang mit den vorgenannten Angelegenheiten notwendig oder sinnvoll sind.

AMD Fab 36 Limited Liability Company & Co. KG hat das Recht, diese Vollmacht jederzeit aus wichtigem Grund zu widerrufen. In diesem Fall ist diese Vollmachtsurkunde unverzüglich an AMD Fab 36 Limited Liability Company & Co. KG zurückzugeben.

to represent AMD Fab 36 Limited Liability Company & Co. KG, acting singly, with respect to the following matters and to grant sub-power of attorney to the same extent:

Termination for good cause of the AMD Fab X Cost Plus Reimbursement Agreement between AMD Fab 36 Holding GmbH and AMD Fab 36 Limited Liability Company & Co. KG dated April 21, 2004 in the event of a good cause pursuant to any of the clauses 5.01 (b) (iv), (v) or (vii) of the AMD Fab X Cost Plus Reimbursement Agreement.

The representative shall be entitled to undertake any and all measures to make or receive any and all declarations that are necessary or appropriate in connection with the aforementioned matters.

AMD Fab 36 Limited Liability Company & Co. KG shall be entitled to revoke this Power of Attorney at any time for good cause. In such case, this power of attorney has to be promptly returned to AMD Fab 36 Limited Liability Company & Co. KG.

---

Diese Vollmacht unterliegt dem Recht der Bundesrepublik Deutschland. Die deutsche Fassung dieser Vollmacht soll im Fall von Widersprüchen oder Abweichungen die maßgebliche sein.

This power of attorney is subject to the Laws of the Federal Republic of Germany. The German language version shall be governing in the event of any dispute or ambiguity.

Dresden, 21. April 2004

---

Dr. Hans-Raimund Deppe  
Vice President und General Manager  
Geschäftsführer

**Management Service Agreement**

between

1. **AMD Saxony Limited Liability Company & Co. KG**, Wilschdorfer Landstraße 101, 01109 Dresden

- hereinafter referred to as “**AMD Saxony**” -

and

2. **SI Investment Limited Liability Company & Co. KG**, Wilschdorfer Landstraße 101, 01109 Dresden

- hereinafter referred to as “**AMD Fab X**” -

and

3. **SI Investment Holding GmbH**, Wilschdorfer Landstraße 101, 01109 Dresden

- hereinafter referred to as “**AMD Fab X Holding**” -

and

4. **Advanced Micro Devices, Inc.**, One AMD Place, Sunnyvale, CA 94088, USA

- hereinafter referred to as “**AMD Inc.**” -

**RECITALS**

**WHEREAS**, M+W Zander Fünfte Verwaltungsgesellschaft mbH (“**M+W**”) and the Free State of Saxony will enter into a Cooperation Agreement pursuant to which a new factory (“**Fab X**”) for the production of wafers (“**Wafer**” means a 300 mm silicon wafer on which integrated circuits particularly for microprocessors are manufactured) is to be erected and operated in Dresden. In addition to the production of Wafers, own research and development to a considerable extent is to be conducted in the new factory in order to develop technology for the manufacture of semiconductors up to industrial production

---

stage. The factory will be operated by AMD Fab X. The current partners of AMD Fab X are AMD Fab X Holding, as limited partner, and AMD Fab X LLC, as general partner holding no share in the capital of the partnership; it is intended that the further partners of AMD Fab X will be M+W, Leipziger Messe GmbH, both additionally also as silent partners, as well as a German limited liability company (GmbH) to be appointed by Leipziger Messe GmbH, the latter as a further general partner holding no share in the capital of the partnership. AMD Inc. is the sole shareholder of AMD Fab X Holding and of AMD Fab X LLC.

**WHEREAS**, AMD Fab X Holding and AMD Fab X, as well as AMD Fab X Holding and AMD Inc., are each entering into cost reimbursement agreements which, as amended, supplemented or otherwise modified from time to time, in the former case are referred to as the “AMD Fab X Cost Plus Reimbursement Agreement”) and in the latter case as the “AMD Fab X Holding Cost Plus Reimbursement Agreement”. According to the AMD Fab X Cost Reimbursement Agreement, AMD Fab X agrees to manufacture Wafers in its factory and to sell such Wafers to AMD Fab X Holding and AMD Fab X Holding agrees to purchase such Wafers from AMD Fab X. According to the AMD Fab X Holding Cost Plus Reimbursement Agreement, AMD Fab X Holding agrees to sell to AMD Inc. and AMD Inc. agrees to purchase from AMD Fab X Holding 100% of all Wafers which AMD Fab X Holding purchases from AMD Fab X under the AMD Fab X Cost Plus Reimbursement Agreement.

**WHEREAS**, AMD Fab X and AMD Inc. have executed a Buy-In Agreement attached hereto as Appendix dated as of 31 October 2003 with respect to the start-up costs incurred prior to the effective date of this Agreement which shall be borne by AMD Fab X.

**WHEREAS**, AMD Fab X is now interested in obtaining certain technical and administrative services related to Fab X.

**NOW THEREFORE**, based on the aforesaid contractual situation, the parties hereto hereby agree as follows:

**§ 1 TECHNICAL AND ADMINISTRATIVE SERVICES**

1.1 AMD Saxony and AMD Inc. hereby agree to render to AMD Fab X such services and support (the „**Services**”) which are reasonably necessary to build up

---

research and development there as well as for the erection and operation of the factory of AMD Fab X in accordance with the overall project plan and the operative business plan and its further development. AMD Saxony or, as the case may be, AMD Inc. shall use Services and support of their affiliated enterprises, insofar as legally possible. The Services in support of Fab X shall particularly, but not conclusively, be rendered in the following areas:

- (a) the development of the infrastructure for Fab X (traffic access, water supply, energy supply, telecommunication, and other logistic issues);
- (b) awarding of contracts, as well as supervision and controlling of the construction work for Fab X, including negotiations with contractors, preparation of contracts, compliance with regulatory matters, negotiations with and use of consultants for construction and other activities in support of the site and construction;
- (c) planning and engineering for Fab X, supply, materials and personnel logistics, warehousing and quality control;
- (d) call for bids and awarding of contracts, as well as procurement of equipment, automation systems, materials, assets, supplies and other support;
- (e) establishing research and development, production, design, and administrative data systems processing capability and upkeep, including communications capability;
- (f) recruiting, relocation and training of personnel, salaries and other benefits, travel, and other personnel-related matters;
- (g) finance, banking, legal, taxation, customs, duties and other similar matters to the extent legally permissible;
- (h) general administrative, space usage and procurement and other infrastructure support matters.

The parties can define the Services agreed upon in Section 1.1 in more detail from time to time.

- 
- 1.2 Services according to Section 1.1 above shall be provided only as may be considered necessary in the reasonable judgment of AMD Fab X to enable AMD Fab X to take up the operation of the factory in Dresden and to conduct research and development there in order to produce and further develop Wafers on an efficient basis. In this respect, the parties hereto endeavor, without hereby assuming a legal obligation, that the production can be started in early 2006.
  - 1.3 Insofar as AMD Saxony or, as the case may be, AMD Inc. are not able to perform the Services themselves or through affiliated entities, but only through third parties, AMD Saxony or, as the case may be, AMD Inc. shall at their own discretion be entitled, but not obligated to procure them either in their own name or in the name of AMD Fab X. If they commission third parties in their own name, all claims against such third party shall be assigned to AMD Fab X and concurrently therewith AMD Saxony or, as the case may be, AMD Inc. shall be indemnified by AMD Fab X against any such claims of the third party. AMD Fab X hereby grants individual power of attorney to each AMD Saxony and AMD Inc. to commission third parties on behalf of AMD Fab X. AMD Saxony and AMD Inc. each shall not be liable for the diligent selection of the third party (except for intent and gross negligence) and shall not be liable for advisory or other services to be rendered by the third party. The terms of the AMD Fab X Cost Plus Reimbursement Agreement remain unaffected.
  - 1.4 AMD Fab X may cancel any Services provided hereunder upon two Business Days' (as defined below) notice provided that AMD Fab X shall remain liable to compensate AMD Saxony, or AMD Inc., as the case may be, for the costs and expenses in providing the relevant Services to the date of cancellation. For purposes of this Agreement, "**Business Day**" means any day of the year on which banks are open for the purpose of conducting a commercial banking business in San Francisco, and when used with reference to payment in any currency, on which dealings are carried out in the London interbank market with respect to such currency.
  - 1.5 AMD Inc. assumes an independent guaranty pursuant to § 311 (1) BGB (German Civil Code) and warrants that AMD Fab X will receive all Services according to Section 1.1 which are reasonably necessary to erect the factory and to enable and further develop the production as well as research and development. The sole legal consequence of this no-fault warranty shall be that AMD Fab X Holding, insofar as the AMD Fab X Cost Plus Reimbursement Agreement is

---

concerned, cannot invoke bad performance or non-performance by AMD Fab X, and that AMD Inc., insofar as the AMD Fab X Holding Cost Reimbursement Agreement is concerned, cannot invoke bad performance or non-performance by AMD Fab X Holding; there shall be no other legal consequences under this warranty.

- 1.6 AMD Fab X may decide at its free discretion whether to accept or refuse any consulting provided under this Agreement. AMD Inc. and AMD Saxony shall not be entitled to give any directions to AMD Fab X under this Agreement.

**§ 2 CONSIDERATION**

- 2.1 Amount to be compensated. AMD Fab X shall compensate AMD Saxony or AMD Inc., as the case may be, on a monthly basis in an amount equal to the costs incurred by AMD Saxony or AMD Inc., as the case may be, and any reasonable related expenses (including without limitation salaries and other costs for AMD Saxony or, as the case may be, AMD Inc. employees) and expenses, plus a markup of 5% on such costs and expenses (above all, travel expenses) plus value added and/or sales taxes, if applicable, at the prevailing rate. Expenses in this sense shall mean services of third parties to AMD Inc. or AMD Saxony, as the case may be, other than those owed as principal Services according to Section 1.1 hereof.

Insofar as the costs were incurred by AMD Saxony or, as the case may be, AMD Inc. for the compensation of third-party Services, such costs (insofar as they represent expenses in the sense of the preceding paragraph) shall be passed through to AMD Fab X without the mark up stated in the preceding paragraph. Likewise, payments made by AMD Saxony or, as the case may be, AMD Inc. to third parties for the purchase of assets, materials or other objects the purchase of which AMD Fab X requests and which are ultimately intended for use by Fab X shall be charged on to Fab X without markup.

Arbitrator. If and insofar as AMD Fab X considers to be inadequate the remuneration for the Services rendered directly by AMD Saxony or, as the case may be, AMD Inc. and if the Parties cannot agree on the amount of remuneration, the Parties will make efforts to promptly agree on an arbitrator and instruct same in the name of all parties to establish the adequacy of the remuneration with final



---

and binding effect on the Parties within the framework of the positions taken by the parties. The Parties shall be given reasonable opportunity to state their positions in writing as well as in the course of one or more hearings before the arbitrator. The arbitrator shall provide reasons for his decision. In his decision, the arbitrator shall also decide on the distribution of costs of the arbitration based on who wins and who loses the dispute (§§ 91 et seqq. German Code of Civil Procedure), although each Party shall bear the costs of its own advisors. The factual findings of the arbitrator shall be final and binding on the Parties. If the Parties have not agreed on an arbitrator within 10 bank working days, on the request of any one Party the President of the Dresden OLG (Higher Regional Court) shall, with binding effect for the Parties, nominate an expert or consultancy company as arbitrator. The arbitrator must not have, and not have had within the past five (5) years, any business relations with any Party or a company affiliated with it in the sense of § 15 AktG (German Stock Corporations Act).

- 2.2 Invoices. Each of AMD Saxony and AMD Inc. shall provide, on a monthly basis, statements of account to AMD Fab X detailing the Services rendered and specifying the costs incurred within the meaning of Section 2.1.
- 2.3 Payments to AMD Saxony. All invoices that are delivered to AMD Fab X by AMD Saxony shall be paid by AMD Fab X in cash within thirty days from its receipt of the relevant invoice. Payments by AMD Fab X shall be made in lawful currency of the Federal Republic of Germany (“Euro”) by wire transfer.
- 2.4 Payments to AMD Inc. prior to Effective Date. All invoices that are issued by AMD Inc. to AMD Fab X for Services rendered prior to the Effective Date (as defined in the AMD Fab X Cost Plus Reimbursement Agreement) shall be paid by AMD Fab X in cash by the earlier of (i) thirty days from its receipt of the relevant invoice, or (ii) ten days after the Effective Date. Payments by AMD Fab X shall be made in lawful currency of the Federal Republic of Germany (“Euro”) by wire transfer.
- 2.5 Payments to AMD Inc. after the Effective Date (Assignment, Crediting). All payments to be made by AMD Fab X to AMD Inc. hereunder for Services rendered after the Effective Date shall be made only in the form of credits against amounts owed or to be owed by AMD Fab X Holding to AMD Fab X under the AMD Fab X Cost Plus Reimbursement Agreement, and for this purpose AMD

---

Inc. hereby assigns to AMD Fab X Holding its entire right, title and interest in compensation for Services hereunder rendered after the Effective Date. In consideration of this assignment, AMD Fab X Holding hereby agrees that, promptly upon being credited for any amount by AMD Fab X under this Section 2.5, it shall credit AMD Inc. against amounts owed or to be owed by AMD Inc. to AMD Fab X Holding under the AMD Fab X Holding Cost Plus Reimbursement Agreement.

- 2.6 Maintenance of books and records. AMD Saxony and AMD Inc. shall keep and maintain, in accordance with generally accepted accounting principles, books and other records with respect to the costs charged by AMD Saxony or AMD Inc., respectively, to AMD Fab X under this Agreement.
- 2.7 No duplication of Article III of the AMD Fab X Cost Plus Reimbursement Agreement. The Services provided by AMD Saxony or AMD Inc. hereunder shall not include the assistance and advice provided by or on behalf of AMD Fab X Holding to AMD Fab X pursuant to Article III of the AMD Fab X Cost Plus Reimbursement Agreement. Such assistance and advice will be invoiced according to Article III (4) of the AMD Fab X Cost Plus Reimbursement Agreement.
- 2.8 Audit. AMD Fab X shall, upon reasonable written notice to AMD Saxony or AMD Inc., as the case may be, have a right to perform a special audit of AMD Saxony or AMD Inc. by independent outside auditors, at AMD Fab X's own cost. The scope of the audit shall be limited to the relevant invoices and supporting documentation for this Agreement.

**§ 3 RELATIONSHIP OF THE PARTIES**

- 3.1 The flow of work at AMD Saxony, at AMD Inc. and at AMD Fab X shall not be interconnected with respect to personnel, organization or technical aspects.
- 3.2 AMD Fab X, AMD Saxony and AMD Inc. may agree whether the employees performing the Services shall temporarily be assigned to AMD Fab X or whether they shall remain subject to the AMD Inc.'s / AMD Saxony's authority to issue instructions. AMD Fab is to decide at its free discretion about the scope and content of the Services to be performed.

- 
- 3.3 Neither AMD Inc. nor AMD Saxony shall be obligated under this Agreement to set up or maintain a fixed place of business for performance of the Services at the location of AMD Fab X or elsewhere in Germany. Nothing in this Agreement shall be interpreted such that AMD Fab X or one of its partners is to be considered a representative of AMD Inc.

**§ 4 TERM AND TERMINATION**

4.1 Effectiveness; Termination

This Agreement shall become effective on the date hereof and shall terminate by ordinary notice of termination given by any of the Parties with three months' notice, such effective date being the end of any calendar month, however, not before the Termination Date as defined in Section 5.1 of the AMD Fab X Cost Plus Reimbursement Agreement or the AMD Fab X Holding Cost Plus Reimbursement Agreement.

- 4.2 In the event AMD Saxony ceases to be a (directly or indirectly) controlled entity (abhängiges Unternehmen) within the meaning of Section 17 para. 2 German Stock Corporation Act (AktG) of AMD Inc., this Agreement shall terminate with respect to AMD Saxony with immediate effect without a separate notice of cancellation being required. The termination shall only take effect for the future. Rights and obligations arising out of circumstances which occurred prior to such termination shall not be affected. This Agreement shall, however, continue to be in full force and effect with respect to AMD Inc., AMD Fab X and AMD Fab X Holding.

- 4.3 Survival. The provisions of Section 9 shall survive any termination of this Agreement.

**§ 5 ASSIGNMENT**

AMD Fab X and AMD Saxony shall have the right to assign their respective rights under this Agreement to banks.

---

**§ 6 LIABILITY**

The liability and warranty assumed by each of AMD Saxony and AMD Inc. vis-à-vis AMD Fab X are determined by the German law on contracts for work and contracts for the provision of services. In providing services hereunder, employees of AMD Saxony and AMD Inc. shall be required to exercise only the same degree of skill and diligence as they would exercise in performing the same or comparable services for AMD Saxony or AMD Inc., as the case may be. The cost reimbursement under the AMD Fab X Holding Cost Plus Reimbursement Agreement remains unaffected hereof.

**§ 7 WRITTEN FORM**

Amendments of and supplements to this Agreement shall be made in written form to be valid. This applies also to a waiver of the written form requirement.

**§ 8 SEVERABILITY**

- 8.1 If any provision of this Agreement or a provision later added hereto is or becomes partially or wholly invalid or unenforceable or should later lose its validity or enforceability, or if a gap in this Agreement is ascertained, the validity of the remaining provisions of this Agreement shall not thereby be affected. In the place of the invalid or unenforceable provision or for filling in the gap of a provision, a reasonable provision shall be deemed to have been agreed as, insofar as legally permissible, comes closest to what the Parties had intended or would have intended according to the meaning and purpose of this Agreement had they been aware of this point.
- 8.2 If the invalidity or unenforceability of any provision is based on a measure of the Service or time agreed therein (deadline or time period), such legally admissible measure shall be deemed agreed which comes closest to the provision.

---

**§ 9 ARBITRATION, APPLICABLE LAW**

- 9.1 If any claim, difference or dispute (each, a “Dispute”) arises out of or in connection with this Agreement and its implementation, including any question regarding its existence, validity, termination or its performance, or in connection with arrangements regarding the performance of this Agreement, the parties affected shall attempt to settle such dispute amicably.
- 9.2 Except for Disputes on the adequacy of the remuneration for Services, the settlement of which is regulated in Section 2.1, if any party to the Dispute determines that a reasonable attempt at settlement has failed, the Dispute shall be finally resolved by binding arbitration, to the exclusion of ordinary courts, under the Rules of Arbitration (“*Schiedsgerichtsordnung*”) of the German Arbitration Board (“*Deutsche Institution für Schiedsgerichtswesen e.V.*”), as amended from time to time, by three arbitrators nominated in accordance with said Rules of Arbitration. The place of arbitration shall be Dresden, Germany. The German Code of Civil Procedure (*ZPO*) shall apply where the Rules of Arbitration are silent.
- 9.3 The language to be used in the arbitration proceedings shall be German and all documents written in a language other than German shall be translated to the German language for the arbitration proceedings, unless otherwise decided by the parties to the arbitration proceedings.
- 9.4 The arbitral award shall be substantiated in writing. The arbitral tribunal shall decide on the matter of costs of the arbitration and on the allocation of expenditure among the respective parties to the arbitration proceedings.
- 9.5 This Agreement is subject to and governed by the laws of the Federal Republic of Germany. The German version of this Agreement shall be controlling.

---

October 31, 2003

/s/ Thomas M. McCoy

---

Advanced Micro Devices, Inc.

October 31, 2003

/s/ Thomas M. McCoy

---

AMD Saxony Limited Liability Company & Co. KG

October 31, 2003

/s/ Hollis M. O'Brien

---

SI Investment Limited Liability Company & Co. KG

October 31, 2003

/s/ Hollis M. O'Brien

---

SI Investment Holding GmbH

To:  
SI Investment Limited Liability  
Company & Co. KG  
Attn. Hollis O'Brien  
Louis-Braille-Str. 5  
01099 Dresden  
Germany

Sunnyvale, 31 October 2003

**Buy-in Agreement**

Dear Mrs. O'Brien:

SI Investment Limited Liability Company & Co. KG ("**Partnership**") is currently involved in the initial stages of a project pursuant to which it will use and develop to the industrial production stage semiconductor manufacturing technology and produce 300 mm silicon wafers, in particular, for microprocessors (the "Project").

1.

Advanced Micro Devices, Inc. ("**AMD**") has entered into several agreements with third parties for various economic and technical studies relating to the feasibility of the Project. In addition, AMD has engaged third parties to advise and assist, inter alia, in negotiating (i) with the German federal and Free State of Saxony governments and the EU regarding, in particular, investment allowances, grants, loan guarantees and other subsidies, (ii) with the Free State of Saxony and M+W Zander Facility Engineering GmbH regarding the support of the Project by such two parties, and (iii) the financing of the Project with the respective banks involved. Partnership has expressed an interest in securing the above-mentioned services pertaining to the Project, as well as the results of the various studies performed by third parties.

In consideration of Partnership's reimbursement of prior costs incurred by AMD in obtaining the services and studies set forth below (plus VAT, if applicable, at the prevailing rate; such reimbursement being payable within 30 days after receipt of a respective invoice from AMD), AMD will transfer to Partnership the following:

- a) the right to co-use the results of the services provided by Arthur D. Little GmbH in connection with a due diligence study of the Project, provided that this right is first granted by the Free State of Saxony to AMD Inc. or, at AMD Inc.'s request, directly to SI Investment Limited Liability Company & Co. KG;

- 
- b) the right to use the results of the services provided by Dresdner Bank AG as the financial advisor in connection with the Project, in particular with respect to the financing of the Project, in part, by a syndicated bank loan with the participation of Dresdner Bank, and the negotiations with the German and Saxony State Governmental Agencies in connection with investment grants and governmental loan guarantees to be granted for the Project;
  - c) the right to use the results of the services provided by the technical appraiser Emerald Technology Valuations LLC and the building appraiser (Angermann GlobalProperty Alliance GmbH);
  - d) the right to use the results of the services provided by Price Waterhouse Coopers in connection with the application for the granting of a Federal / State Guarantee;
  - e) the right to use the results of the consulting services provided by McKinsey & Co. in connection with the Project;
  - f) the right to use the results of the services provided by O'Melveny & Myers LLP in connection with the Project, in particular in connection with the drafting, negotiating and execution of finance, project and other documents relating to the Project;
  - g) the right to use the results of the services provided by Nörr Stiefenhofer Lutz in connection with the Project, in particular in connection with the drafting, negotiating and execution of finance, project and other documents relating to the Project;
  - h) the right to use the results of the services provided by Baker & McKenzie in connection with the Project, in particular in connection with the drafting, negotiating and execution of finance, project and other documents relating to the Project;
  - i) the right to use the results of the services provided by Gleiss Lutz in connection with the Project, in particular in connection with the drafting and negotiating of the EU-notification and applications for investment grants, investment allowances and the Federal/State guarantee, and,



- 
- j) the right to use the results of the services provided by Ernst & Young in connection with the Project, in particular in connection with the drafting, negotiating and execution of finance, project and other documents relating to the Project, particularly the tax and accounting aspects of such documents.

AMD makes available to Partnership all of the documentation reflecting the planning results and AMD will ensure that any supporting information relating thereto will be made available to Partnership by appropriate means.

AMD will further cause any third party to make available their results relating to the Project to Partnership and AMD hereby expressly assigns any claim it may have against such third party to Partnership. Partnership hereby accepts such assignment.

2.

In addition to the reimbursement provided for under Section 1 above, Partnership shall reimburse AMD for any other out-of-pocket costs (plus VAT, if applicable, at the prevailing rate; such reimbursement being payable within 30 days after receipt of the respective invoice from AMD) incurred by AMD in connection with the Project (including travel and other costs, but excluding salaries, related withholding taxes and employee benefit costs for AMD employees who are assigned to furnish services, and without any allocation of AMD's general and administrative costs) in furnishing services to Partnership which are necessary or appropriate in connection with the Project. This shall also include costs incurred by AMD for reimbursement of the costs for services received from the law offices Clifford Chance Pünder in connection with the Project, in particular in connection with the drafting, negotiating and execution of finance, project and other documents relating to the Project.

This agreement shall cover the reimbursement of costs for services rendered until the date of the taking effect of the Fab X Management Services Agreement between the Partnership, AMD, SI Investment Holding GmbH and AMD Saxony Limited Liability Company & Co. KG, irrespective of whether they have been invoiced before or after such date. Any reimbursement of costs incurred by AMD or its affiliates in connection with the Project after said date shall be dealt with in one or more additional agreements to be entered into between the Partnership as service recipient and AMD and/or its affiliates as service provider.

If you are in agreement with the foregoing terms and conditions, please confirm by signing the duplicate of this letter attached hereto, whereby, the letter shall constitute an agreement between AMD and Partnership which shall be governed by German law. The jurisdiction for any legal proceeding arising from this agreement shall be Dresden.

---

Sincerely,

Advanced Micro Devices, Inc.

/s/ Tom McCoy

---

By: Tom McCoy  
Title: Senior Vice President  
and General Counsel

Date: 31 October 2003

Accepted and agreed to:

/s/ Hollis O'Brien

---

SI Investment Limited Liability  
Company & Co. KG,  
represented by: SI Investment  
Management LLC  
By: Hollis O'Brien  
Title: Manager

Date: 31 October 2003

**EUR 750,000,000**

**REVOLVING CREDIT AGREEMENT**

**Dated April 21, 2004**

**among**

**ADVANCED MICRO DEVICES, INC.,**

**AMD FAB 36 HOLDING GMBH,**

**and**

**AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG**

---

**TABLE OF CONTENTS**

|             |   | <u>Page</u> |
|-------------|---|-------------|
| ARTICLE I   | DEFINITIONS AND ACCOUNTING TERMS                                  | 2           |
| Section 1.1 | Definitions   | 2           |
| Section 1.2 | Miscellaneous   | 3           |
| ARTICLE II  | SUBORDINATED REVOLVING LOAN PROVISIONS                            | 4           |
| Section 2.1 | Required Revolving Loans  | 4           |
| Section 2.2 | Time of Revolving Loans   | 4           |
| Section 2.3 | Subordination of Revolving Loans; Acknowledgment of Subordination | 4           |
| Section 2.4 | Final Maturity Date   | 4           |
| ARTICLE III | INTEREST PROVISIONS   | 5           |
| Section 3.1 | Interest Rate   | 5           |
| Section 3.2 | Computation of Interest   | 5           |
| Section 3.3 | Interest Periods  | 5           |
| Section 3.4 | Interest Payments   | 6           |
| ARTICLE IV  | DISBURSEMENTS AND REPAYMENTS                                      | 6           |
| Section 4.1 | Disbursements and Repayments                                      | 6           |
| Section 4.2 | Currency for Repayment of Revolving Loans.                        | 6           |
| Section 4.3 | Repayment of Revolving Loans in Excess of €750,000,000.           | 6           |
| ARTICLE V   | OBLIGATIONS UNCONDITIONAL   | 7           |
| Section 5.1 | Absolute and Unconditional Nature of the Sponsors' Obligations    | 7           |
| ARTICLE VI  | MISCELLANEOUS   | 7           |
| Section 6.1 | No Waiver; Modifications in Writing                               | 7           |
| Section 6.2 | Severability of Provisions  | 7           |
| Section 6.3 | Termination   | 8           |
| Section 6.4 | Assignment  | 8           |
| Section 6.5 | Notice  | 8           |
| Section 6.6 | Relationship to Other Agreements                                  | 9           |

---

**TABLE OF CONTENTS**  
**(Continued)**

|             |   | <u>Page</u>                |
|-------------|---|----------------------------|
| ARTICLE VII | GOVERNING LAW, JURISDICTION, AND LANGUAGE   | 9                          |
| Section 7.1 | Governing Law; etc                          | 9                          |
| Section 7.2 | Forum Selection and Consent to Jurisdiction | 10                         |
| Section 7.3 | Waiver of Jury Trial                        | 10                         |
| Section 7.4 | Use of English Language                     | 10                         |
| Section 7.5 | Counterparts                                | 11                         |
|             | (ii)  | REVOLVING CREDIT AGREEMENT |

---

## REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT (this "Agreement"), dated April 21, 2004, is made between ADVANCED MICRO DEVICES, INC., a corporation organised and existing under the laws of the State of Delaware, United States of America, with its chief executive office and principal place of business at One AMD Place, Sunnyvale, California 94088, United States of America ("AMD Inc."), AMD FAB 36 HOLDING GMBH, Dresden, registered under HRB21270 in the Commercial Register kept at the Amtsgericht Dresden County Court ("AMD Holding"); and, together with AMD Inc., collectively, the "Sponsors", and AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG, Dresden, registered under HRA5255 in the Commercial Register kept at the Amtsgericht Dresden County Court (the "Company").

### W I T N E S S E T H :

WHEREAS, the Company has been formed for the purpose of constructing, owning, and operating a 300 mm silicon wafer microprocessor fabrication facility located at Wilschdorfer Landstrasse 101 in 01109 Dresden;

WHEREAS, the Company has entered into a Term Loan Facility Agreement (as the same may from time to time hereafter be amended, supplemented, modified, renewed, extended, restated or novated and in effect, the "Facility Agreement"), made among, *inter alia*, the Company, Dresdner Bank AG in Berlin, as Security Agent and Reporting Agent (in such capacity, the "Security Agent" and "Reporting Agent" respectively) for the Finance Parties (as defined in the Facility Agreement), and Dresdner Bank Luxembourg S.A., as Facility Agent (in such capacity, the "Facility Agent"), providing, *inter alia*, for a senior secured term loan facility aggregating up to €700,000,000 (seven hundred million Euros);

WHEREAS, the Sponsors have agreed to make certain unsecured subordinated Revolving Loans available to the Company to enable the Company and the Sponsors to fulfill certain obligations under the Finance Documents (as defined in the Facility Agreement); and

WHEREAS, the Sponsors are willing to extend such commitment on the terms and subject to the conditions hereinafter set forth.

REVOLVING CREDIT AGREEMENT

---

NOW, THEREFORE, the Sponsors and the Company agree as follows:

**ARTICLE I**  
**Definitions and Accounting Terms**

**Section 1.1 Definitions.** Unless otherwise defined herein, terms used herein have the meanings assigned to such terms in the Facility Agreement. In addition, the following terms when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

“Agreement” has the meaning assigned to that term in the introduction to this Agreement.

“AMD Holding” has the meaning assigned to that term in the introduction to this Agreement.

“AMD Inc.” has the meaning assigned to that term in the introduction to this Agreement.

“Applicable Euribor Rate” means the rate for deposits in Euros for the relevant Interest Period which appears on the display designated as “Page BTMM EU (Actual ACT/360)” of the Bloomberg Financial Markets Services Screen (or such other display as may replace Page BTMM EU (actual ACT/360) on the Bloomberg Financial Markets Services Screen) as of 11:00 a.m., Frankfurt time, on the latest Target Day which is at least two Business Days prior to the commencement of such Interest Period.

“Applicable LIBOR Rate” means the interest rate per annum for dollars for the relevant Interest Period in the London Interbank Market which in accordance with the display designated as “Page BBAM” of the Bloomberg Financial Markets Services Screen (or such other display as may replace Page BBAM on the Bloomberg Financial Markets Services Screen) is quoted as the offered rate at 11:00 a.m. (London time) on the second Business Day prior to the commencement of such Interest Period.

“Applicable Rate” means, with respect to any Interest Period, (i) for Revolving Loans made in Euros, the Applicable Euribor Rate; or (ii) for Revolving Loans made in dollars, the Applicable LIBOR Rate; or (iii) if the Applicable Euribor Rate or the Applicable LIBOR Rate (as the case may be) cannot be determined as provided in the definitions thereof, the prime lending rate as announced by Bank of America, N.A., on the second Business Day prior to the commencement of such Interest Period.

“Company” has the meaning assigned to that term in the introduction to this Agreement.

“Dollar Equivalent” means, with respect to any Revolving Loan, the amount, expressed in Dollars, which results from the conversion of Euros to Dollars at a spot rate of exchange equal to the spot rate (mid rate) of exchange quoted on Page WFX of the Bloomberg Financial Markets Services Screen (or such other display as may

---

replace Page WFX on the Bloomberg Financial Markets Services Screen), expressed in Dollars, for the sale of Euros for Dollars prevailing on the date of determination.

“Euro Equivalent” means, with respect to any Revolving Loan, the amount, expressed in Euros, which results from the conversion of Dollars to Euros at a spot rate of exchange equal to the spot rate (mid rate) of exchange quoted on Page WFX of the Bloomberg Financial Markets Services Screen (or such other display as may replace Page WFX on the Bloomberg Financial Markets Services Screen), expressed in Euros, for the sale of Dollars for Euros prevailing on the date of determination.

“Facility Agreement” has the meaning assigned to that term in the second recital of this Agreement.

“Interest Period” has the meaning assigned to such term in Section 3.3 of this Agreement.

“Liabilities” has the meaning ascribed to such term in the Subordination Agreement.

“Outstanding Euro Amount” has the meaning assigned to such term in Section 4.3 of this Agreement.

“Reporting Agent” has the meaning assigned to that term in the second recital of this Agreement.

“Revolving Loan” means an unsecured, subordinated revolving loan that is or is required to be made by a Sponsor to the Company pursuant hereto, which loans are subordinated pursuant to the Subordination Agreement.

“Revolving Loan Facility” means the revolving loan facility made available by the Sponsors to the Company under this Agreement, in an amount not to exceed €750,000,000.

“Revolving Loan Termination Date” has the meaning assigned to that term in Section 6.3 of this Agreement.

“Security Agent” has the meaning assigned to that term in the second recital of this Agreement.

“Sponsors” has the meaning assigned to that term in the introduction to this Agreement.

“Target Day” means a day on which the Trans-European Automated Automate Real Time Gross Settlement Express Transfer payment system is open for the settlement of payments in Euros.

**Section 1.2 Miscellaneous.** In this Agreement, unless the context requires otherwise, (i) any reference to a Transaction Document shall be a reference to such



document as it shall have been, or from time to time, may be amended, supplemented, modified, renewed, extended, restated or novated, in each case, in accordance with its terms and the Facility Agreement; (ii) any statutory provisions shall be construed as references to those provisions as amended, modified, re-enacted, or replaced from time to time; (iii) words importing a gender include every gender; and (iv) references to Sections are to Sections of this Agreement. Section headings are inserted for reference only and shall be ignored in construing this Agreement. A time of day, unless otherwise specified, shall be construed as a reference to Frankfurt am Main time.

## **ARTICLE II**

### **Subordinated Revolving Loan Provisions**

**Section 2.1 Required Revolving Loans.** On the terms and subject to the conditions of this Agreement, the Sponsors, jointly and severally, hereby undertake that either Sponsor or both of the Sponsors will make Revolving Loans to the Company at any time and from time to time prior to the Revolving Loan Termination Date as contemplated by Section 2.2 in an aggregate principal amount at any time outstanding not in excess of €750,000,000 (Revolving Loans made in Dollars shall be calculated at the Euro Equivalent thereof at the date such loans are made). Amounts borrowed under this Section 2.1 may be reborrowed (following repayment thereof) up to but excluding the Revolving Loan Termination Date.

**Section 2.2 Time of Revolving Loans.** The Revolving Loans will be made in cash and will be made in such amounts as shall be required, upon the written demand of the Company (with at least 5 days' prior notice to the Sponsors) at any time and from time to time for general corporate purposes, including without limitation working capital, cash expenses and other capital requirements of the Company.

**Section 2.3 Subordination of Revolving Loans; Acknowledgment of Subordination.** The Sponsors and the Company acknowledge and agree that the obligation of the Company to pay, prepay or repay the principal of and interest on the Revolving Loans and all other obligations of the Company to the Sponsors under or in connection with this Agreement, shall be subordinated to the Liabilities, to the extent provided under the Subordination Agreement.

**Section 2.4 Final Maturity Date.** The Revolving Loan Facility (and all Revolving Loans thereunder) shall mature on the Revolving Loan Termination Date. On such date, the Company shall pay all amounts outstanding under this Agreement, subject to the provisions of the Subordination Agreement, and all commitments hereunder to extend Revolving Loans shall forthwith be cancelled.

**ARTICLE III**  
**Interest Provisions**

**Section 3.1 Interest Rate.** The unpaid principal amount from time to time outstanding of each Revolving Loan shall bear interest at the Applicable Rate for the Interest Period in effect for such Revolving Loan plus 4.00% per annum. As provided in the Subordination Agreement, payment of interest on the Revolving Loans has been subordinated to the Liabilities and, once permitted to be paid by the Company pursuant to the Subordination Agreement, shall be paid as set forth in Section 3.4.

**Section 3.2 Computation of Interest.** Interest on each Revolving Loan shall be computed on the basis of the actual number of days elapsed and a 360-day year.

**Section 3.3 Interest Periods.** The Company shall, in connection with any request to borrow or continue Revolving Loans, select an interest period (each, an “Interest Period”) to be applicable to such Revolving Loan, which Interest Period shall be, at the Company’s option, either a one, two, three or six month period; provided that:

(a) the initial Interest Period for any Revolving Loan shall commence on the date on which such Revolving Loan is made;

(b) in the case of immediately successive Interest Periods continued as set forth in this Section 3.3, each successive Interest Period shall commence on the day on which the next preceding Interest Period expires;

(c) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that, if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day;

(d) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (e) of this section, end on the last Business Day of a calendar month;

(e) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Loan Termination Date; and

(f) in the event the Company fails to specify an Interest Period for a Revolving Loan (whether in borrowing new Revolving Loans or continuing existing Revolving Loans), the Company shall be deemed to have selected an Interest Period of one month at the Applicable Rate (based on the currency of such Revolving Loans).

**Section 3.4 Interest Payments.** Subject to Sections 3.1 and 4.1, interest on each Revolving Loan shall be payable in arrears on the last day of an Interest Period (and, in the case of Interest Periods longer than three (3) months, at the end of every three (3) months) (or on such longer payment schedule as may be agreed by the parties), upon any repayment of the relevant Revolving Loan (to the extent accrued on the amount being repaid) and at maturity (including final maturity).

**ARTICLE IV**  
**Disbursements and Repayments**

**Section 4.1 Disbursements and Repayments.** The proceeds of each Revolving Loan shall be deposited to the Company's account at Dresdner Bank AG, Bank Sorting Code 85080000, Account Number 407665500, or such other account as the Company may indicate upon not less than two (2) Business Days' notice to the Sponsors. Subject to the Subordination Agreement, all payments of interest or principal to be made by the Company in respect of the Revolving Loans shall be made to the applicable Sponsor(s) that made such Revolving Loans at its address as set forth in Section 6.5 (or to such other address or account as such Sponsor may specify by written notice to the Company and the Facility Agent), not later than noon, Frankfurt time, on the date due (after giving effect to any extension of any such due date contemplated hereby); and funds received after that hour shall be deemed to have been received on the next succeeding Business Day.

**Section 4.2 Currency for Repayment of Revolving Loans.** Except to the extent expressly provided in this Section 4.2, Revolving Loans shall be repaid in the currency in which such Revolving Loans were made. With the prior consent of AMD Inc., any Revolving Loan made in Dollars may be repaid in Euros, provided that the amount of any such repayment shall be at least equal to the Euro Equivalent of the outstanding principal amount of such Revolving Loan, as determined on the date three (3) Business Days prior to the date such Revolving Loan is repaid or such other date as may be mutually agreed. With the prior consent of AMD Inc., any Revolving Loan made in Euros may be repaid in Dollars, provided that the amount of any such repayment shall be at least equal to the Dollar Equivalent of the outstanding principal amount of such Revolving Loan, as determined on the date three (3) Business Days prior to the date such Revolving Loan is repaid or such other date as may be mutually agreed.

**Section 4.3 Repayment of Revolving Loans in Excess of €750,000,000.** Notwithstanding anything to the contrary in this Agreement, but subject to Section 4.1, in the event that, for any two (2) consecutive Business Days, the total of (i) the Euro Equivalent of the amount of outstanding Revolving Loans made in Dollars (as determined on each such Business Day) and (ii) the amount of outstanding Revolving Loans made in Euros (the sum of (i) and (ii) being the "Outstanding Euro Amount") exceeds €750,000,000, the Company shall repay Revolving Loans in an amount such that, after giving effect to such repayment, the Outstanding Euro Amount (using, with respect to outstanding Revolving Loans made in Dollars, the Euro Equivalent thereof, as determined on the Business Day prior to the date of such repayment) shall not exceed €750,000,000.

---

**ARTICLE V**  
**Obligations Unconditional**

**Section 5.1 Absolute and Unconditional Nature of the Sponsors' Obligations.** The obligation of the Sponsors to perform their respective obligations under this Agreement, and the right of the Company to receive the proceeds of each Revolving Loan to be made by or on behalf of either of the Sponsors as provided herein, shall be absolute and unconditional, it being the intention of the parties hereto that all obligations of the Sponsors under or in connection with this Agreement shall be paid and performed in all events in the manner and at the times herein provided, irrespective of and without prejudice to, in particular, any rights or remedies that are available to the other parties hereto under any agreements or any applicable laws. The Sponsors shall be entitled to set off, and to raise rights of retention, in respect of their respective payment claims hereunder and under the other Transaction Documents only to the extent their respective counterclaims are undisputed or have been the subject of a final judgment.

**ARTICLE VI**  
**Miscellaneous**

**Section 6.1 No Waiver; Modifications in Writing.** No failure or delay on the part of the Sponsors or the Company, as the case may be, in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the Sponsors or the Company, as the case may be, at law or otherwise. No amendment, modification, supplement, termination, or waiver of or to any provision of this Agreement, or consent to any departure by either of the Sponsors, or the Company, therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the Company, the Sponsors, and, if prior to the Revolving Loan Termination Date, the Facility Agent and the Security Agent.

Any waiver of any provision of this Agreement, and any consent to any departure by either Sponsor from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on either Sponsor or the Company, as the case may be, in any case shall entitle such Sponsor or the Company, as the case may be, to any other or further notice or demand in similar or other circumstances.

**Section 6.2 Severability of Provisions.** In case any provision of this Agreement is invalid or unenforceable, the validity or enforceability of the remaining provisions hereof shall remain unaffected. The parties hereto shall have an obligation to replace any invalid or unenforceable provision by a valid and enforceable provision that approximates best the economic purpose of the invalid provision.



---

to the Company: AMD Fab 36 LLC & Co. KG  
Wilschdorfer Landstrasse 101  
01109 Dresden  
Attention: Geschäftsführer  
Facsimile No: (49) 351 277 91001

with, in each case prior to the Revolving Loan Termination Date, a copy concurrently delivered:

to the Security Agent: Koppenstrasse 93  
10877 Berlin  
Fax Number: +49 30 3153 2317  
Attention: Hans-Jürgen Dittmann;

to the Facility Agent: Dresdner Bank Luxembourg S.A.  
26, rue du Marché-aux-Herbes  
L-2097 Luxembourg  
Fax Number: +352 4760 3222  
Attention: Agencies  
Albertine Prellwitz, Katja Paul

Copies: Fax Number: 352 4760 565  
Attention: Loan Administration  
Andrea Stockemer, Eva Marmitt

**Section 6.6 Relationship to Other Agreements.** The rights of the Company or the Sponsors, as the case may be, pursuant to this Agreement are in addition to any other rights or remedies which the Company or the Sponsors, as the case may be, may have under statutory law or other agreements between one or more of the Company, the Facility Agent, the Security Agent, the other Finance Parties, and the Sponsors.

#### **ARTICLE VII Governing Law, Jurisdiction, and Language**

**Section 7.1 Governing Law; etc.** NOTWITHSTANDING THAT THE FACILITY AGREEMENT AND GUARANTEE AGREEMENT ARE GOVERNED BY THE LAWS OF GERMANY, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK. THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS TO WHICH ANY OF THE SPONSORS IS A PARTY CONSTITUTE THE ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY PRIOR AGREEMENTS, WRITTEN OR ORAL, WITH RESPECT THERETO.

---

**Section 7.2 Forum Selection and Consent to Jurisdiction.** ANY LITIGATION BASED HEREON, OR ARISING OUT OF, OR UNDER, THIS AGREEMENT MAY BE BROUGHT AND MAINTAINED IN THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH SPONSOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH SPONSOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH SPONSOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY SPONSOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH SPONSOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

**Section 7.3 Waiver of Jury Trial.** EACH SPONSOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY SPONSOR. EACH SPONSOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE FINANCE PARTIES ENTERING INTO THE FINANCE DOCUMENTS AND EACH SUCH OTHER TRANSACTION DOCUMENT TO WHICH THEY ARE A PARTY.

**Section 7.4 Use of English Language.** This Agreement has been executed in the English language. All certificates, reports, notices, and other documents and communications given or delivered pursuant to this Agreement shall

---

be in the English language and, if reasonably requested by the Facility Agent, a certified German translation thereof shall be furnished by the relevant party promptly following such request. In the event of any inconsistency, the English language version of any such document shall control.

**Section 7.5 Counterparts.** This Agreement 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.

*[The Remainder of This Page Is Intentionally Left Blank]*



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized, as of the date first above written.

**THE SPONSORS:**

**ADVANCED MICRO DEVICES, INC.**

By: /s/ Kelly Smales

\_\_\_\_\_  
Name: Kelly Smales  
Title: Treasurer

**AMD FAB 36 HOLDING GMBH**

By: /s/ Hartwig Grabbe

\_\_\_\_\_  
Name: Hartwig Grabbe  
Title: Attorney-In-Fact

By: /s/ Hartwig Grabbe

---

Name: Hartwig Grabbe  
Title: Attorney-In-Fact

**Certification of Chief Executive Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Hector de J. Ruiz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Advanced Micro Devices, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) 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
  - c) 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.

Date: August 5, 2004

/s/ HECTOR DE J. RUIZ

---

**Hector de J. Ruiz**  
Chairman of the Board, President and Chief Executive Officer

**Certification of Chief Financial Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Robert J. Rivet, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Advanced Micro Devices, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) 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
  - c) 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.

Date: August 5, 2004

/s/ ROBERT J. RIVET

\_\_\_\_\_  
Robert J. Rivet  
Executive Vice President and Chief Financial Officer

**Certification of Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Advanced Micro Devices, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the Quarterly Report on Form 10-Q of the Company for the quarterly period ended June 27, 2004 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 5, 2004

/s/ HECTOR DE J. RUIZ

---

Hector de J. Ruiz  
Chairman of the Board,  
President and Chief Executive Officer



**Certification of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Advanced Micro Devices, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the Quarterly Report on Form 10-Q of the Company for the quarterly period ended June 27, 2004 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 5, 2004

/s/ ROBERT J. RIVET

---

Robert J. Rivet  
Executive Vice President and  
Chief Financial Officer