

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

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.
For the fiscal year ended December 26, 2004

OR

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

For the transition period from _____ to _____

Commission File Number 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)

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

Securities registered pursuant to Section 12(b) of the Act:

<u>(Title of each class)</u>	<u>(Name of each exchange on which registered)</u>
\$.01 Par Value Common Stock	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes No

Aggregate market value of the common stock held by non-affiliates based on the reported closing price of common stock on June 25, 2004, which was the last business day of the registrant's most recently completed second fiscal quarter.

\$5,488,863,023

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

393,889,539 shares of common stock as of February 22, 2005

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement for the Annual Meeting of Stockholders to be held on April 28, 2005, are incorporated into Part II and III hereof.

AMD, the AMD Arrow logo, AMD Athlon, AMD Opteron, AMD Sempron, AMD Turion, AMD PowerNow!, Alchemy, Geode and combinations thereof are trademarks of AMD. Spansion and MirrorBit, and combinations thereof, are trademarks of Spansion LLC. Vantis is a trademark of Lattice Semiconductor Corporation. Legerity is a trademark of Legerity, Inc. Microsoft, Windows, and Windows NT 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. HyperTransport is a licensed trademark of the HyperTransport Technology Consortium. NetWare is a registered trademark of Novell, Inc. in the United States and/or other jurisdictions. Other terms used to identify companies and products may be trademarks of their respective owners.

[Table of Contents](#)

Advanced Micro Devices, Inc.
FORM 10-K
For The Fiscal Year Ended December 26, 2004
INDEX

PART I		1
ITEM 1.	BUSINESS	1
ITEM 2.	PROPERTIES	15
ITEM 3.	LEGAL PROCEEDINGS	16
ITEM 4.	SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS	16
PART II		17
ITEM 5.	MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS	17
ITEM 6.	SELECTED FINANCIAL DATA	18
ITEM 7.	MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS	20
ITEM 7A.	QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK	66
ITEM 8.	FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA	69
ITEM 9.	CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE	120
ITEM 9A.	CONTROLS AND PROCEDURES	120
ITEM 9B.	OTHER INFORMATION	120
PART III		121
ITEM 10.	DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT	121
ITEM 11.	EXECUTIVE COMPENSATION	121
ITEM 12.	SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS	121
ITEM 13.	CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS	121
ITEM 14.	PRINCIPAL ACCOUNTING FEES AND SERVICES	121
PART IV		122
ITEM 15.	EXHIBITS, FINANCIAL STATEMENT SCHEDULES	122
SIGNATURES		131

PART I

ITEM 1. BUSINESS

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,” “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 sales, operating results and anticipated cash flows; capital expenditures; depreciation and amortization expenses; research and development expenses; marketing, general and administrative expenses; the development and timing of the introduction of new products and technologies, including our dual-core microprocessors, AMD Turion™ 64 microprocessors, ORNAND architecture and QuadBit technology; customer and market acceptance of our AMD Opteron™, AMD Athlon™ 64, AMD Turion 64 and AMD Sempron™ microprocessors; customer and market acceptance of Spansion™ Flash memory products based on MirrorBit™ and floating gate technology, including the ORNAND architecture; our ability to remain competitive and maintain or increase our market position; our ability to maintain and develop key relationships with our existing and new customers; the ability to produce our microprocessor and Flash memory products in the volumes and mix required by the market; 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 advanced manufacturing process technologies in a timely and effective way; our ability to achieve cost reductions in the amounts and in the timeframes anticipated; the process technology transitions in our wafer fabrication facilities; and our ability to gain market share in high-growth global markets such as China, Latin America, India and Eastern Europe.

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 20 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. We assume no obligation to update forward-looking statements.

General

We are a leading semiconductor company with manufacturing facilities in the United States, Europe and Asia, and sales offices throughout the world. We design, manufacture and market industry-standard digital integrated circuits, or ICs, that are used in diverse product applications such as desktop and mobile personal computers, or PCs, workstations, servers, communications equipment such as mobile telephones, and automotive and consumer electronics. Our products consist primarily of microprocessors and Flash memory devices. In addition, we offer embedded microprocessors for personal connectivity devices and specific consumer markets.

Additional Information

We were incorporated under the laws of Delaware on May 1, 1969. Our mailing address and executive offices are located at One AMD Place, Sunnyvale, California 94088, and our telephone number is (408) 749-4000. References in this report to “AMD,” “we,” “us,” “our,” or the “Company” shall mean Advanced Micro Devices, Inc. and our consolidated subsidiaries, including Spansion LLC and its subsidiaries, unless the context indicates otherwise.

[Table of Contents](#)

Effective June 30, 2003, we established Spansion LLC, our Flash memory majority-owned subsidiary in which we hold a 60 percent interest and Fujitsu Limited holds the remaining 40 percent. Spansion is headquartered in Sunnyvale, California, and its manufacturing, research and assembly operations are in the United States and Asia. As part of the formation of Spansion, we and Fujitsu contributed to Spansion our respective interests in Fujitsu AMD Semiconductor Limited, our former manufacturing joint venture, which we refer to as the Manufacturing Joint Venture in this report. We also contributed our Flash memory inventory, our manufacturing facility in Austin, Texas (Fab 25), our memory research and development facility in Sunnyvale, California (the SDC) and our Flash memory assembly and test facilities in Thailand, Malaysia and Suzhou, China. Fujitsu contributed its Flash memory division, including related inventory, cash and its Flash memory assembly and test facility in Malaysia. Spansion is managed by a ten-member board of managers of which we are currently entitled to appoint six managers and Fujitsu is entitled to appoint four managers.

For a description of certain financing arrangements for Spansion, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” beginning on page 20, below.

We post on the Investor Relations page of our Web site, www.amd.com, a link to our filings with the SEC, our Principles of Corporate Governance, our Code of Ethics for our Chief Executive Officer, Chief Financial Officer, Corporate Controller and other senior finance executives, our “Worldwide Standards of Business Conduct,” which applies to our directors and all our employees, and the charters of our Audit, Compensation, Finance and Nominating and Corporate Governance committees. Our filings with the SEC are posted as soon as reasonably practical after they are filed electronically with the SEC. You can also obtain copies of these documents by writing to us at: Corporate Secretary, AMD, One AMD Place, M/S 68, Sunnyvale, California 94088, or emailing us at: Corporate.Secretary@amd.com. All these documents and filings are available free of charge.

For financial information about geographic areas and for segment information with respect to sales and operating results, refer to the information set forth in Note 9 of our consolidated financial statements, beginning on page 104, below.

For a discussion of the risk factors related to our business operations, please see the sections entitled, “Cautionary Statement Regarding Forward-Looking Statements,” above, and the “Risk Factors” and “Financial Condition” sections set forth in “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” beginning on page 20, below.

Our Industry

Semiconductors are critical components used in a variety of electronic products and systems. An IC is a semiconductor device that consists of many interconnected transistors on a single chip. Since the invention of the transistor in 1948, improvements in IC process and design technologies have led to the development of smaller, more complex and more reliable ICs at a lower cost per function. In order to satisfy the demand for faster, smaller and lower-cost ICs, semiconductor manufacturers have continually developed improvements in manufacturing and process technology. For example, ICs are increasingly being manufactured using smaller geometries. In addition, the size of silicon wafers from which ICs are produced has increased, with some semiconductor manufacturers migrating from 200-millimeter wafers to 300-millimeter wafers. Use of smaller process geometries can result in products that are higher performing, use less power and cost less to manufacture on a per unit basis. Use of larger wafers can contribute further to a decrease in manufacturing costs per unit and increase capacity by yielding more chips per wafer.

The availability of low-cost semiconductors, together with increased customer demand for sophisticated electronic systems, has led to the proliferation of semiconductors. Today, virtually all electronic products use

[Table of Contents](#)

semiconductors, including PCs and related peripherals, wired and wireless voice and data communications and networking products including mobile telephones, facsimile and photocopy machines, home entertainment equipment, industrial control equipment and automobiles.

Within the global semiconductor industry, we primarily participate in two markets:

- microprocessors, which are used for control and computing tasks, and complementary chipset components, which perform essential logic functions that support the microprocessors; and
- Flash memory devices, which are used to store data and programming instructions.

In addition, we offer embedded microprocessors for personal connectivity devices and specific consumer markets.

Computation Products

The Microprocessor Market

A microprocessor is an IC that serves as the central processing unit, or CPU, of a computer. It generally consists of millions of transistors that process data and control other devices in the system, acting as the brain of the computer. The performance of a microprocessor is a critical factor impacting the performance of a PC and other similar devices. The principal indicators of microprocessor performance are work-per-cycle, or how many instructions are executed per cycle, and clock speed, representing the rate at which its internal logic operates, measured in units of hertz, or cycles processed per second. Other factors impacting microprocessor performance include memory size, data access speed and power consumption. Developments in circuit design and manufacturing process technologies have resulted in significant advances in microprocessor performance over the past two decades. We market our processors based on overall performance, which is a function of both architecture and clock speed. We believe overall performance is a better indicator of CPU capability than simply clock speed.

The microprocessor market is characterized by short product life cycles and migration to ever-higher-performance microprocessors. To compete successfully in this market, microprocessor manufacturers must transition to new process technologies at a fast pace and offer higher-performance microprocessors in significantly greater volumes. They also must achieve manufacturing yield and volume goals in order to sell microprocessors at competitive prices.

A factor driving change in the microprocessor industry is the introduction of 64-bit computing. The bit rating of a microprocessor generally denotes the largest amount of numerical data that a microprocessor can handle in a single clock cycle. For approximately the last ten years, microprocessors have had 32-bit computing capabilities. While 32-bit processors have historically been sufficient, we believe that they will face challenges as new data and memory-intensive consumer and enterprise software applications gain popularity. Microprocessors with 64-bit processing capabilities enable systems to have greater performance by allowing software applications and operating systems to access more memory and process more data. From applications for multimedia and gaming, to grid computing and extensive enterprise databases, we believe the demand for 64-bit computing will increase across the computing industry. Additionally, we believe that the introduction of advanced operating systems, such as Microsoft® Windows® 64, and software applications designed to take advantage of the 64-bit platform, will drive further adoption of 64-bit processors.

Another emerging trend in the microprocessor industry is the introduction of dual-core processors, which consist of two processor cores on one semiconductor die. Over the last ten years as microprocessors have increased in transistor density and overall performance capabilities, they have increasingly faced power consumption challenges. By enabling numerous operations to be executed simultaneously across two processor cores, we believe dual-core processors will increase processor performance with a minimal increase in power consumption.

[Table of Contents](#)

Improvements in the performance characteristics of microprocessors and decreases in production costs resulting from advances in manufacturing process technology, as well as lower selling prices, have increased the demand for microprocessors over time. The greatest demand for our microprocessors today is from PC manufacturers. Factors that we believe will stimulate growth in the demand for microprocessors include lower-priced PC systems, enhanced product features, and strategic purchases of new PC systems to deploy new tools and technologies. In addition, we believe that there will be increased demand for microprocessors from server manufacturers as enterprises continue to upgrade their networks.

Microprocessor Products

We currently offer microprocessor products for desktop and mobile PCs, servers and workstations. Our microprocessors are based on the x86 architecture. In addition, we design them based on a superscalar reduced instruction set computer, or RISC, architecture. RISC architecture allows microprocessors to perform fewer types of computer instructions thereby allowing the microprocessor to operate at a higher speed. We also design our microprocessors to be compatible with operating system software such as Windows XP, Windows 2000, Windows NT[®], Windows 98 (and Windows predecessor operating systems), Linux, NetWare[®], Solaris and UNIX.

Desktop PCs. Our microprocessors for desktop PCs consist of AMD Athlon 64 FX, AMD Athlon 64 and AMD Sempron processors. In September 2003, we introduced our AMD Athlon 64 microprocessor, the first Windows-compatible, x86 architecture-based 64-bit PC processor. AMD Athlon 64 processors are based on the AMD64 technology platform, which extends the industry-standard x86 instruction set architecture to 64-bit computing. We designed our AMD Athlon 64 processors to allow simultaneous 32-bit and 64-bit computing, enabling users to protect their information technology investments by continuing to use their 32-bit software applications while implementing 64-bit applications on the timetable of their choice. We design our AMD Athlon 64 processors for enterprises and sophisticated PC users that seek to access large amounts of data and memory. Simultaneously with our introduction of the AMD Athlon 64 processor, we introduced the AMD Athlon 64 FX processor, designed specifically for gamers, PC enthusiasts and digital content creators who require products that can perform graphic-intensive tasks. Our AMD Sempron microprocessors, which we introduced in July 2004, are designed for value-conscious consumers of desktop and notebook PCs.

Mobile PCs. Our microprocessors for the mobile computing market consist of mobile AMD Athlon 64 processors, mobile AMD Sempron processors and AMD Athlon XP-M processors. In January 2005, we announced our new AMD Turion 64 mobile technology, and we expect to introduce our AMD Turion 64 processors in the first half of 2005. Our OEM customers incorporate our processors into a variety of designs, including full-size and thin-and-light notebooks. We have designed our mobile processor products for high-performance computing and wireless connectivity. They feature advanced power management from AMD PowerNow![™] technology, which offers reduced power consumption and extended system battery life. We intend to continue to invest in our mobile microprocessor product portfolio with increasing emphasis on low-power computing.

Servers and Workstations. Our x86 microprocessors for servers and workstations consist of the AMD Opteron and AMD Athlon MP processors. A server is a powerful computer on a network that is dedicated to a particular purpose and stores large amounts of information and performs the critical functions for that purpose. A workstation is essentially a heavy-duty desktop, designed for tasks such as computer-aided design. We introduced our first 64-bit microprocessor for servers and workstations, AMD Opteron, in April 2003. Like the AMD Athlon 64 processors, the AMD Opteron processors for servers and workstations are based on the AMD64 technology and are designed to allow simultaneous 32-bit and 64-bit computing. AMD Opteron processors were the first processors to extend the industry-standard x86 instruction set architecture to 64-bit computing. AMD Opteron processors can be used in a variety of server applications, including business processing (enterprise resource planning, customer relationship management, and supply chain management) and business intelligence. AMD Opteron processors can also be used in workstation applications such as engineering

[Table of Contents](#)

and digital content creation software, and other information technology infrastructure applications such as intensive Web serving and messaging.

Dual-Core Processors. We are currently developing dual-core processor technology, which we believe provides a path for increasing processor performance with a minimal increase in power consumption. In August 2004, we demonstrated the first x86 dual-core processor when we showed a Hewlett Packard HP ProLiant server powered by our AMD Opteron dual-core processors. We plan to offer dual-core processors for servers and workstations in mid-2005, followed by dual-core processors for the PC market in the second half of 2005.

Chipsets. We also sell chipset products and make available motherboard reference design kits, designed to support our microprocessors for use in PCs and embedded products. A chipset provides the interface between all of a PC's subsystems and sends data from the microprocessor to all the input/output and storage devices, such as the keyboard, mouse, monitor and hard drive. The primary reason we offer these products to our customers is to provide them with a solution that will allow them to use our microprocessors and develop and introduce their products into the market more quickly.

Our AMD Opteron and AMD Athlon 64 processors support HyperTransport™ technology, which is a high-bandwidth communications interface we initially developed, as well as integrated memory controllers that enable substantially higher performance than existing, non-integrated memory controller architectures. We expect our advanced architecture to provide users with even greater performance improvements as operating systems and software applications begin leveraging the benefits of our 64-bit architecture. To that end, we work with Microsoft to incorporate 64-bit support into the Windows operating system. Microsoft has indicated that it intends to release its Windows Server 2003 Service Pack 1, Windows Server 2003 for 64-bit Extended Systems and Windows XP 64-bit Extended Systems in the first half of 2005. We believe that the backward compatibility of our AMD64-based processors will allow users to migrate more easily from current 32-bit operating systems and applications to future 64-bit operating systems and applications on a common hardware platform.

The Flash Memory Market

Flash memory is an important semiconductor component used in electronic devices such as mobile phones, digital cameras, DVD players, set top boxes, MP3 players and automotive electronics such as navigation systems. Flash memory differs from other types of memory due to its ability to retain stored information after power is turned off. Most electronic products use Flash memory to store important program instructions, or code, as well as multimedia content, or data. Code storage retains the basic operating instructions, operating system software or program code, which allows an electronic product to function while data storage retains digital content, such as multimedia files. For example, Flash memory in camera phones retains both the program code, which enables users to turn on and operate the phone, and also stores data such as digital photos.

The Flash memory market can be divided into three major categories based on application. Portable, battery-powered communications applications are categorized as "wireless." Solid-state removable memory applications are categorized as "removable storage." All other applications, such as consumer and automotive electronics, are categorized as "embedded." Applications within the wireless category include mobile phones, smart phones and personal digital assistants, or PDAs. Applications within the removable storage category include USB drives and memory cards. Applications within the embedded category include consumer electronics, automotive electronics and networking and telecom equipment such as hubs, switches and routers. Currently, we serve the wireless and embedded categories of the NOR Flash memory market with our Spansion Flash memory products.

There are two major architectures of Flash memory employed in the market today: NOR and NAND. NOR Flash memory, which is generally more reliable than NAND Flash memory and less prone to data corruption, is typically used to store program code. NAND Flash memory has been generally less expensive to manufacture and is typically used in devices that require high-capacity data storage such as memory cards for digital cameras and MP3 players. Within the Flash memory market, we sell NOR Flash memory products.

[Table of Contents](#)

Flash Memory Products

Our Spansion Flash memory products encompass a broad spectrum of densities and features and are primarily designed to support code, or mixed code and data storage applications in the wireless and embedded categories of the Flash memory market. Our products are used in mobile telephones, consumer electronics, automotive electronics, networking equipment and other applications that require memory to be non-volatile and electrically rewritten. Our Spansion Flash memory products are based on two technologies today: single bit-per-cell floating gate technology and two bits-per-cell MirrorBit technology.

Floating Gate Technology. Floating gate is the conventional memory cell technology that is utilized by most Flash memory companies today. A memory cell comprises a transistor having a source, a drain and a control gate. The control gate regulates the current flow between the source and the drain, thereby defining whether the memory cell stores a “0” bit or a “1” bit by storing a charge in the cell storage medium. The “floating gate” is a conductive storage medium between the control gate and the source and drain. It is referred to as a floating gate because it is electrically isolated or “floating” from the rest of the cell to ensure that stored charge does not leak away resulting in memory loss. Our products using floating gate are typically used for code storage and code execution as well as in applications that take advantage of their ease of in-system re-programmability. In addition, floating gate technology has the ability to operate at very high read speeds and temperatures, which we believe is optimal for harsh environments such as automotive applications. Spansion Flash memory products using floating gate technology are available in densities from one megabit to 128 megabits. These products are designed to meet the requirements of a range of Flash memory market segments, from the low-end, low-density value segment to the high-performance, high-density wireless segment.

MirrorBit Technology. Our Spansion Flash memory products also include devices based on MirrorBit technology, our proprietary technology that stores two bits of data in a single memory cell thereby doubling the density, or storage capacity, of each memory cell and enabling higher density products. However, unlike the conductive storage medium used by floating gate technology, MirrorBit technology stores charge in a non-conductive storage medium without a floating gate. NOR Flash memory products based on MirrorBit technology require fewer wafer fabrication process steps to manufacture and have a simpler cell architecture compared to similar products based on single-bit-per-cell or multi-level-cell (MLC) floating gate technology. As a result, MirrorBit technology can contribute to a smaller die size and improved unit production yields. Due to these characteristics, for a given density, NOR Flash memory products based on MirrorBit technology can be less expensive to manufacture than similar products based on conventional floating gate single-bit-per-cell or MLC technology.

Our Spansion Flash memory products based on MirrorBit technology are available in densities ranging from 16 megabits to 512 megabits. We believe the lower cost and higher yields of MirrorBit technology enable us to manufacture higher density NOR Flash products at a cost that is not achievable using competing NOR MLC floating gate technology. We believe our MirrorBit technology will allow us to compete in certain portions of the Flash memory market, such as data storage, with die sizes that are similar to NAND Flash memory products on the same process geometry and where high densities and low cost-per-bit are important.

We are developing a new architecture, ORNAND, based on our MirrorBit technology, which we believe will allow us to develop products that combine some of the best attributes of NOR architecture and NAND architecture. We believe that ORNAND architecture will allow us to offer products with higher densities in our traditional NOR Flash memory markets, while enabling us to enter and compete in new markets that have traditionally been served by NAND-based products, such as removable storage. During 2004, we also demonstrated the ability of MirrorBit technology to store four bits-per-cell, which we refer to as QuadBit, with a working proof-of-concept. If successful, we believe our QuadBit technology would enable us to target the higher density and lower cost portions of the removable storage category, which is currently served by vendors of NAND-based products.

[Table of Contents](#)

Our Spansion Flash memory products implement different features and interfaces to address different customer requirements. These different features and interfaces may be supported on both floating gate and MirrorBit technology. For example, we provide products that support faster burst- and page-mode read interfaces. Burst-mode products allow fast access to data in a continuous sequential operation, while page-mode products allow fast random access to data within a page. The wireless market in particular currently demands such solutions. In addition, Spansion products may also include features such as Advanced Sector Protection, which improves security by protecting Flash memory content against inadvertent or deliberate changes to code or data, and simultaneous read/write, which improves system performance by allowing a device to conduct read, write or erase operations simultaneously.

Packaging is an integral element of our Spansion Flash memory products. We offer a range of packaging options, from single-die configurations and multi-chip products (MCPs) to package-less solutions, such as Known Good Die. Our packaging includes lead-frame and ball grid array or BGA, which describe the mechanical connection between the package and the printed circuit board. Our packages in the embedded markets mostly use lead-frame solutions while our packages for the wireless markets almost exclusively use BGA solutions due to the small physical size or form factor enabled by BGA. A significant percentage of our products are shipped as MCPs due to increasing demand for smaller mobile phones. Mobile phone manufacturers are especially interested in MCPs due to the single, space-saving package, low power consumption, and high performance. Our MCP products incorporate Spansion Flash memory devices and third-party non-Flash memory die, such as static RAM, or SRAM, or pseudo-static RAM, or pSRAM devices, which we purchase from outside vendors.

The Embedded Processor Market

In addition to our primary microprocessor and Flash memory markets, we also offer embedded microprocessors for personal connectivity devices and specific consumer markets. Personal connectivity devices can be classified into five main segments: computer devices such as thin clients; smart handheld devices and PDAs; access devices such as gateways and access points; entertainment devices such as media players and digital TVs; and automotive devices such as in-car navigation systems, telematics and media playback. The applications in these devices typically require highly integrated systems-on-chip, or SoCs, that include high-performance, low-power embedded processors and microcontrollers.

Personal Connectivity Solutions

We offer low-power, high-performance embedded microprocessor products for personal connectivity devices. Our products include low-power x86 and MIPS[®] architecture-based embedded processors. We design these embedded processors to address customer needs in non-PC markets where Internet connectivity and/or low power processing is a priority. Typically these embedded processors are used in products that require high to moderate levels of performance where key features include reduced cost, mobility, low power and small form factor. Products that use our embedded processors are targeted for specific market segments using SoC design techniques.

Our embedded microprocessor products consist of the AMD Geode™ family and the AMD Alchemy™ family of products. AMD Geode microprocessors are based on the x86 architecture and are optimized for high performance and low power. The Geode technology integrates complex functionality, such as processing, system logic, graphics, and audio and video decompression onto one integrated device. We target our AMD Geode processors at each of the five market segments referenced above. With the AMD Geode family of microprocessors, we are able to extend the range of our x86-based product offerings to serve markets from embedded appliances to high-end servers.

We developed our AMD Alchemy embedded processors for portable media players, Internet access points, and gateways in which low power consumption is a key factor. All of these products have an architecture that provides a 32-bit MIPS instruction set. They support operating systems such as Microsoft Windows, CE.NET, Linux, VxWorks, and other operating systems.

[Table of Contents](#)

In October 2004, we launched the Personal Internet Communicator (PIC), a consumer device that we believe will help provide affordable Internet access to first time technology users in high-growth markets such as Brazil, the Caribbean, China, India, Mexico and Russia. Through the PIC, end users are provided with access to a variety of communication and productivity tools such as an Internet browser, e-mail, word processing, spreadsheet applications and a presentation viewer. The PIC runs on an operating system powered by Microsoft Windows technology. The PIC is manufactured by third-parties, and is designed to be branded, marketed and sold by local service providers such as telecommunications companies and government-sponsored communications programs. We supply the embedded microprocessors for the PIC. We developed the PIC in support of our 50x15 initiative, which is our goal to deliver affordable, accessible Internet connectivity and computing capabilities to 50 percent of the world's population by 2015.

We believe our personal connectivity solutions offer our customers high performance at low power, faster time to market and lower product costs. Our strategy is to continue providing cost-effective embedded microprocessors for personal connectivity devices that our customers can deploy quickly in their applications.

Marketing and Sales

We market and sell our products, other than Flash memory products, under the AMD trademark. We sell our products through our direct sales force and through third-party distributors and independent sales representatives in both domestic and international markets pursuant to non-exclusive agreements. Our AMD channel partner programs provide product information, training and marketing materials.

Spansion Flash memory products are marketed and sold under the Spansion trademark. We and Fujitsu act as distributors of Spansion Flash memory products and receive a commission from Spansion. We distribute Spansion products in the same manner as we sell our other products, through our direct sales force and through third-party distributors and independent sales representatives.

We market our products through our direct marketing and co-marketing programs. Our direct marketing activities include print and Web-based advertising as well as consumer and trade events and other industry and consumer communications. In addition, we have cooperative advertising and marketing programs with our customers, including market development programs. Under these programs, eligible customers can use market development funds in partial reimbursement for advertisements and marketing programs related to our products.

Customers

Our customers consist primarily of OEMs and third-party distributors in both domestic and international markets. We generally warrant that products sold to our customers will, at the time of shipment, be free from defects in workmanship and materials and conform to our approved specifications. Subject to certain exceptions, we offer a three-year limited warranty to end users for microprocessor products that are commonly referred to as "processors in a box" and a one-year limited warranty to direct purchasers of all other microprocessor, Flash memory and embedded processor products. Under limited circumstances, we may offer an extended limited warranty to direct purchasers of Flash memory products or of microprocessor products that are intended for systems targeted at the commercial and embedded end markets. Generally, our customers may cancel orders 30 days prior to shipment without incurring a penalty.

Original Equipment Manufacturers

We focus on three types of OEMs: multi-nationals, selected regional accounts and target market customers. Large multi-nationals and regional accounts are our core OEM customers. Our OEM customers for microprocessors include numerous foreign and domestic manufacturers of PCs and PC motherboards. Our OEM customers for Flash memory products include foreign and domestic manufacturers of mobile telephones, consumer electronics, automotive electronics and networking equipment companies. Generally, OEMs do not

[Table of Contents](#)

have a right to return our products other than pursuant to the standard limited warranty. However, from time to time we may agree to repurchase a portion of these products pursuant to negotiated terms.

No OEM customer accounted for ten percent or more of our consolidated gross sales in 2002. In 2003 and 2004, one of our customers, Fujitsu, accounted for approximately 13 percent and 22 percent of our consolidated gross sales. Fujitsu primarily distributes Spansion Flash memory products. However, Fujitsu also is an OEM customer with respect to our microprocessor products.

Third-Party Distributors

Our authorized distributors resell to sub-distributors and mid-sized and smaller OEMs and to electronic manufacturing service providers and other companies. Distributors typically maintain an inventory of our products. In most instances, our agreements with distributors protect their inventory of our products against price reductions and provide return rights with respect to any product that we have removed from our price book or that is not more than twelve months older than the manufacturing code date. In addition, some agreements with our distributors may contain standard stock rotation provisions permitting limited levels of product returns.

No distributor accounted for ten percent or more of our consolidated gross sales in 2002. In each of 2003 and 2004, one of our distributors, Avnet, Inc., accounted for approximately 13 percent of our consolidated gross sales. Avnet primarily distributes our microprocessor products. In addition, in 2003 and 2004, Fujitsu accounted for approximately 13 percent and 22 percent of our consolidated gross sales. Fujitsu primarily distributes Spansion Flash memory products. However, Fujitsu is also an OEM customer with respect to our microprocessor products.

Competition

The IC 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. Technological advances in the industry result in frequent product introductions, regular price reductions, short product life cycles and increased product capabilities that may result in significant performance improvements.

Competition in the Microprocessor Market

Intel Corporation has dominated the market for microprocessors used in desktop and mobile PCs for many years. Intel is also a dominant competitor in the server segment of the microprocessor market. 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. In addition, Intel's significant financial resources enable 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, and adversely affect our margins and profitability. Intel also 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 Intel's:

- pricing and allocation strategies and actions, including aggressive pricing for microprocessors to increase market share;
- product mix and introduction schedules;
- product bundling, marketing and merchandising strategies;
- exclusivity payments to its current and potential customers;

Table of Contents

- control over industry standards, PC manufacturers and other PC industry participants, including motherboard, memory, chipset and basic input/output system, or BIOS, suppliers; and
- strong brand, and marketing and advertising expenditures in support of the brand.

Intel also dominates the PC system platform, which includes core logic chipsets, graphics chips, motherboards and other components necessary to assemble a PC system. 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 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, Intel has significant leverage over these companies because they support each new generation of Intel's microprocessors.

Currently, we do not 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 Intel's proprietary bus interface protocol. 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 of motherboards, chipsets and other system components support our microprocessor offerings, particularly our AMD64-based microprocessors.

Similarly, we offer OEMs and other companies motherboard reference design kits designed to support our processors. The primary reason we offer these products is to provide our customers with a solution that will allow them to use our microprocessors and develop and introduce their products in the market more quickly.

We expect Intel to maintain its dominant position in the microprocessor 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 continue and increase in the future to the extent Intel reduces the prices for its products and as Intel introduces new competitive products. For example, in 2004, Intel introduced 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 recently announced that it will offer dual-core 64-bit processors for the desktop market in the second quarter of 2005. Moreover, Intel currently manufactures certain of its microprocessor products on 300-millimeter wafers using 90-nanometer process technology, which can result in products that are higher performing, use less power and cost less to manufacture. We are currently transitioning to 90-nanometer process technology for microprocessor manufacturing, and we expect to transition to using 300-millimeter wafers in 2006.

Competition in the Flash Memory Market

With respect to Flash memory products, our principal competitors are Intel, Samsung, Toshiba, STMicroelectronics N.V., Sharp Electronics Corporation, Silicon Storage Technology, and Macronix International. Most of these competitors market devices incorporating multi-level-cell floating gate technology that store fractional charge levels within a single cell thereby permitting the storage of two bits per cell. We believe many of our other competitors plan to develop multi-level-cell technology.

We expect competition in the market for Flash memory devices to increase as existing manufacturers introduce new products, new manufacturers enter the market, industry-wide production capacity increases and competitors aggressively price their Flash memory products to increase market share. In addition, we and certain of our competitors have licensed non-volatile memory technology called NROM technology from a third party.

[Table of Contents](#)

NROM technology allows memory devices to store two bits of data in a memory cell using a nitride-based non-conducting storage medium. NROM technology has similar characteristics to our MirrorBit technology and may allow these competitors to develop Flash memory technology that is competitive with MirrorBit technology. Furthermore, NAND Flash memory vendors gained an increasing share of the overall Flash memory market in 2003 and 2004. If further significant improvements in NAND Flash memory technology occur in the future, applications currently using NOR Flash memory may transition to NAND Flash memory. As a result, NAND Flash memory vendors may gain a substantial share of the overall Flash memory market.

Competition With Respect to Our Personal Connectivity Solutions

With respect to our embedded processors for personal connectivity devices, our principal competitors are Freescale (formerly Motorola Semiconductor), Hitachi, Intel, NEC Corporation, Toshiba, and Via Technologies. We expect competition in the market for these devices to increase as our principal competitors focus more resources on developing low-power embedded processor solutions.

Research and Development

Our research and development is focused on product design and system and process development. We have devoted significant resources to product design and to developing and improving manufacturing process technologies. In order to remain competitive, we must continue to maintain our technology leadership. In particular, we have made and continue to make significant investments in manufacturing process technologies and in strategic relationships with industry-leading companies relating to manufacturing process technology development.

Our research and development expenses for fiscal 2004, 2003, and 2002 were \$935 million, \$852 million and \$816 million.

Microprocessors

We conduct product and system research and development activities for our microprocessor products in the United States with additional design and development engineering teams located in Germany, China, Japan and India. With respect to process development, some research and development takes place at Fab 30. We also have a joint development agreement with IBM pursuant to which we work together to develop new microprocessor process technologies to be implemented on silicon wafers. On September 15, 2004, we amended our joint development agreement and extended the relationship for an additional three years, from December 31, 2005 to December 31, 2008. Under the amended development agreement, we agreed to continue to develop jointly new microprocessor process technologies. In addition, we received a license from IBM to have our products made in 90-nanometer and 65-nanometer at a third-party foundry or a joint manufacturing facility owned by us and a third-party foundry. The development agreement may be extended further by the mutual agreement of the parties, and can also be terminated immediately by either party if the other party permanently ceases doing business, becomes bankrupt or insolvent, liquidates or undergoes a change of control, or can be terminated by either party upon 30 days written notice upon a failure of the other party to perform a material obligation thereunder.

Flash Memory

We conduct product and system research and development activities for our Flash memory products primarily in Sunnyvale, California and in Japan, with additional design and development engineering teams located in the United States, Europe and Asia. Currently, our primary development focus with respect to Flash memory is on products based on MirrorBit technology for the wireless and embedded business markets. In addition, we are developing new non-volatile memory process technology, including 90-nanometer floating gate technology and 90-nanometer MirrorBit technology utilizing three-layer copper interconnect. Our SDC facility is developing processes on 200-millimeter and 300-millimeter wafer technology.

[Table of Contents](#)

As of December 26, 2004, our Spansion Flash memory products were manufactured on 110-, 130-, 170-, 200-, 230- and 320-nanometer process technologies. In addition, we plan to be in production on 90-nanometer process technology in the second half of 2005.

Manufacturing, Assembly and Test Facilities

We operate 12 owned manufacturing facilities, of which five are wafer fabrication facilities and seven are assembly and test facilities. In addition, we have substantially finished the construction of our Fab 36 wafer fabrication facility, and we are in the process of installing equipment. Fab 36 is located adjacent to Fab 30 and will be equipped to manufacture microprocessor products on 300-millimeter wafers at 65-nanometer geometries and below.

Our microprocessor and Flash memory fabrication is conducted at the facilities described in the chart below:

Facility Location	Wafer Size (diameter in millimeters)	Production Technology (in nanometers)	Approximate Clean Room Square Footage
<i>Microprocessor Products</i>			
Dresden, Germany			
Fab 30	200	90 and 130	150,000
<i>Flash Memory Products</i>			
Austin, Texas			
Fab 25	200	110	120,000
Aizu-Wakamatsu, Japan			
JV1	200	230 and 320	70,000
JV2	200	200 and 230	91,000
JV3	200	110, 130 and 170	118,000

As of December 26, 2004, we manufactured our microprocessor products at Fab 30, primarily on 90-nanometer process technology. With respect to our Flash memory products, JV3 employs mostly 110-nanometer technology in production. We are also manufacturing 90-nanometer MirrorBit technology development wafers in Fab 25 and plan to be in production with this technology in the second half of 2005. We use process technologies at 200-nanometers and above to manufacture our low-to medium-density Spansion Flash memory products. During 2004, we transitioned the manufacturing of certain of these products from 230-nanometer to 200-nanometer process technology to further reduce our manufacturing costs.

We have foundry arrangements with third parties for the production of our embedded processor and chipset products. In addition, in November 2004 we entered into sourcing and manufacturing technology agreements with Chartered Semiconductor Manufacturing pursuant to which Chartered will become an additional manufacturing source for our AMD64-based microprocessors. We intend to use the additional capacity provided by Chartered to augment production at our manufacturing facilities. We expect that Chartered will commence production for us in 2006.

We have also developed an approach to manufacturing that we call Automated Precision Manufacturing, or APM. APM comprises a suite of automation, optimization and real-time data analysis technologies which automate the way decisions are made within our fabrication facilities. We use APM during process technology transitions, and believe APM enables greater efficiency, higher baseline yields, better binning and faster yield learning.

[Table of Contents](#)

Our current assembly and test facilities for microprocessor and Flash memory products are described in the chart set forth below:

Facility Location	Approximate Manufacturing Area Square Footage	Activity
<i>Computation Products</i>		
Penang, Malaysia	112,000	Assembly & Test
Singapore	194,000	Test
Suzhou, China	44,310	Test
<i>Flash Memory Products</i>		
Bangkok, Thailand	78,000	Assembly & Test
Kuala Lumpur, Malaysia	71,300	Assembly & Test
Penang, Malaysia	71,000	Assembly & Test
Suzhou, China	30,250	Assembly & Test

Some assembly and final testing of our microprocessor and personal connectivity solutions products is also performed by subcontractors in the United States and Asia.

Intellectual Property and Licensing

We rely on a combination of protections provided by contracts, copyrights, patents, trademarks and other common law rights such as trade secret laws, to protect our products and technologies from unauthorized third-party copying and use. As of December 26, 2004, we had more than 6,500 U.S. patents and had over 2,000 patent applications pending in the United States. In certain cases, we have filed corresponding applications in foreign jurisdictions. We expect to file future patent applications in both the United States and abroad on significant inventions, as we deem appropriate. We do not believe that any individual patent, or the expiration thereof, is or would be material to our business.

In May 2001, we signed a patent cross-license agreement with Intel Corporation, under which we granted each other a non-exclusive license under each party's patents for the manufacture and sale of semiconductor products worldwide. We pay Intel a royalty for certain licensed microprocessor products sold by us or any AMD affiliate anywhere in the world. The license terminates in January 2010.

In connection with the formation of Spansion, we and Fujitsu transferred to Spansion an ownership interest in, or granted Spansion a license to, use all patents, copyrights, trade secrets (know-how), trademarks and maskwork rights necessary for Spansion's business. Specifically, under an intellectual property contribution and assignment agreement, we and Fujitsu:

- assigned our respective ownership interest in jointly held patents developed by the Manufacturing Joint Venture;
- contributed ownership rights of the Manufacturing Joint Venture in patents held jointly by us, Fujitsu and the Manufacturing Joint Venture;
- granted to Spansion joint ownership interest in all maskworks and trade secrets and copyrights in specified software necessary for Spansion's business;
- granted Spansion a license to copyrights in other software necessary for Spansion's business; and
- transferred our respective ownership interest in all trademarks necessary for Spansion's business.

In addition, we and Fujitsu entered into cross license agreements with Spansion pursuant to which we and Fujitsu each granted Spansion a non-exclusive license to all semiconductor patents wholly owned by us or as to which we had the right to grant licenses or sublicenses (without such grant resulting in the payment of royalties).

[Table of Contents](#)

The agreements enable Spansion to use these patent rights within the scope of their business, but Spansion is not permitted to grant licenses or sublicenses to third parties with respect to these licensed patent rights.

Spansion granted to us and Fujitsu a license to its patents for use in the manufacture and sale of semiconductor products. The patent cross-license agreements terminate upon the later of July 1, 2013 or upon the transfer of all of our or Fujitsu's ownership or economic interest in Spansion, unless earlier terminated upon 30 days notice following a change of control of the other party.

In addition to the patent cross-licenses, and for so long as we have a controlling interest in Spansion, we have the right to sublicense Spansion's patents and patent applications. In return, for as long as we have a controlling interest in Spansion, we are required to enforce our patents to minimize losses to Spansion from third party claims that Spansion is infringing such third party's intellectual property rights. At such time as our direct or indirect beneficial ownership interest in Spansion decreases to fifty percent or less, we will no longer be contractually obligated to defend Spansion in connection with such third party claims.

Effective June 30, 2003, we entered into a patent cross-license with Fujitsu whereby each party was granted a non-exclusive license under certain of the other party's respective semiconductor-related patents. This patent cross-license agreement terminates upon the tenth anniversary of the agreement, unless earlier terminated upon 30 days notice following a change of control of the other party. In addition, we entered into numerous cross-licensing and technology exchange agreements with other companies under which we both transfer and receive technology and intellectual property rights.

Backlog

We manufacture and market standard lines of products. Consequently, a significant portion of our sales are made from inventory on a current basis. Sales are made primarily pursuant to purchase orders for current delivery or agreements covering purchases over a period of time, which orders or agreements may be revised or canceled without penalty. Generally, in light of current industry practice and experience, we do not believe that such agreements provide meaningful backlog figures or are necessarily indicative of actual sales for any succeeding period.

Employees

As of December 26, 2004, we had approximately 8,300 employees and Spansion had approximately 7,600 employees. Approximately 220 individuals remained employed by us or Fujitsu but were made available on a full-time basis to Spansion or its subsidiaries. We expect that substantially all of these individuals will become employees of Spansion or its subsidiaries in 2005. Certain employees of Spansion Japan are represented by a union. We believe that our relationship with our employees is good.

Raw Materials

Our manufacturing operations depend upon obtaining deliveries of equipment and adequate supplies of materials on a timely basis. We purchase equipment and materials from a number of suppliers. From time to time, suppliers may extend lead times, limit supply to us or increase prices due to capacity constraints or other factors. Because some equipment and material that we purchase is complex, it is sometimes difficult for us to substitute one supplier for another or one piece of equipment for another. In addition, certain raw materials we use in the manufacture of our products are available from a limited number of suppliers. For example, we are largely dependent on one supplier for our 200-millimeter and 300-millimeter silicon-on-insulator (SOI) wafers. Although there are alternative sources available for us to procure these wafers, we have not qualified these sources and do not believe that they currently have sufficient capacity to meet our requirements. We are also dependent on key chemicals from a limited number of suppliers and also rely on a limited number of foreign companies to supply the majority of certain types of IC packages we purchase. Similarly, we purchase commercial non-Flash memory die, such as SRAM and pSRAM, from third-party suppliers and incorporate these

[Table of Contents](#)

die into Spansion multi-chip package products. Some of these suppliers are also our competitors. 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.

In June 2002, we formed Advanced Mask Technology Center GmbH and Co. KG, or AMTC, and Maskhouse Building Administration GmbH and Co. KG, or BAC, two joint ventures with Infineon Technologies AG and Dupont Photomasks, Inc., for the purpose of constructing and operating an advanced photomask facility in Dresden, Germany. Photomasks are used during the production of ICs. The purpose of AMTC is to conduct research, development and pilot production of optical photomasks for advanced lithography technology. AMTC has commenced pilot production of optical photomasks and has provided test photomasks to Fab 30 for qualification and production photomasks. We intend to procure advanced photomasks from AMTC pursuant to the terms of our joint venture arrangement and use these photomasks in the manufacture of certain of our microprocessor products.

Environmental Regulations

Many aspects of our business operations and products are regulated by domestic and international environmental laws and regulations. These regulations include limitations on discharge of pollutants to air, water, and soil; remediation requirements; product chemical content limitations; manufacturing chemical use and handling restrictions; pollution control requirements; waste minimization considerations; and treatment, transport, storage and disposal of solid and hazardous wastes. If we fail to comply with any of the applicable environmental regulations we may be subject to fines, suspension of production, alteration of our manufacturing processes, sales limitations, and/or 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 to comply with environmental regulations. Any failure to control the use, disposal or storage, or adequately restrict the discharge of hazardous substances could subject us to future liabilities and could have a material adverse effect on our business. We believe we are in material compliance with applicable environmental requirements, and do not expect those requirements to result in material expenditures in the foreseeable future.

ITEM 2. PROPERTIES

Our principal engineering, manufacturing, warehouse and administrative facilities (excluding Spansion) comprise approximately 3.7 million square feet and are located in the United States, Germany, Singapore, China and Malaysia. Approximately 2.2 million square feet of this space is in buildings we own. We lease approximately 115,000 square feet of land in Singapore and 270,000 square feet of land in Suzhou, China for our microprocessor assembly and test facilities, and we lease the building for our microprocessor assembly and test facility in Suzhou, China. We acquired approximately 9.7 million square feet of land in Dresden, Germany for Fab 30. In August 2004, we transferred 5.4 million square feet to our German Subsidiary, AMD Fab 36 Limited Liability Company & Co. KG, or AMD Fab 36 KG, for Fab 36. Fab 36 and the land owned by AMD Fab 36 KG is encumbered by a lien which will secure AMD Fab 36 KG's obligations under the Fab 36 Term Loan. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements."

Spansion's principal engineering, manufacturing and administrative facilities comprise approximately 4.4 million square feet and are located in the United States, France, Japan, Korea, Malaysia, Thailand and China. Approximately 4.2 million square feet of this space is in buildings Spansion owns. The remainder of this space is leased, primarily from us. Spansion also leases approximately 625,000 square feet of land in Suzhou, China for its assembly and test facility and approximately 3.9 million square feet of land in Japan for its wafer fabrication facilities. Spansion's assembly and test facility in Suzhou, China is encumbered by a lien securing the Spansion Term Loan and its Fab 25 facility in Austin, Texas is encumbered by a lien securing the July 2003 Spansion Term Loan. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—July 2003 Spansion Term Loan and Guarantee," and "—Spansion China Term Loan," below.

[Table of Contents](#)

In addition to principal engineering, manufacturing, warehouse and administrative facilities, we lease sales office facilities in 21 locations globally, totaling approximately 200,000 square feet. These facilities are generally located in commercial centers near our customers, principally in the United States, Latin America, Europe and the Asia region.

We have an operating lease on property containing two buildings with an aggregate of approximately 364,000 square feet, located on 45.6 acres of land in Sunnyvale, California (One AMD Place). This operating lease ends in December 2018. In 2000, we entered into a lease agreement for three buildings, totaling 175,000 square feet, located adjacent to One AMD Place, which we call AMD Square, to be used as engineering offices and lab facilities. During 2002, we determined that we no longer required AMD Square. As of December 28, 2003, AMD Square is vacant, and we are actively marketing it for sublease. During 2003, we also vacated approximately 75,000 square feet of leased administrative office space in Austin, Texas. We continue to have lease obligations with respect to these facilities ranging from 18 to 24 months, and we are marketing these facilities for sublease.

Our and Spansion's leases cover facilities with expiration terms of generally one to 20 years. We currently do not anticipate difficulty in either retaining occupancy of any of our facilities through lease renewals prior to expiration or through month-to-month occupancy, or replacing them with equivalent facilities.

ITEM 3. LEGAL PROCEEDINGS

Environmental Matters

We are named as a responsible party on Superfund clean-up orders for three sites in Sunnyvale, California that are on the National Priorities List. Since 1981, we have discovered hazardous material releases to the groundwater from former underground tanks and proceeded to investigate and conduct remediation at these three sites. The chemicals released into the groundwater were commonly used in the semiconductor industry in the United States in the wafer fabrication process prior to 1979.

In 1991, we received Final Site Clean-up Requirements Orders from the California Regional Water Quality Control Board relating to the three sites. We have entered into settlement agreements with other responsible parties on two of the orders. Under these agreements other parties have assumed most of the costs as well as the lead in conducting remediation activities under the orders. We remain responsible for these costs in the event that the other parties do not fulfill their obligations under the settlement agreements.

To address anticipated future remediation costs under the orders, we have computed and recorded an estimated environmental liability of approximately \$3.7 million in accordance with applicable accounting rules and have not recorded any potential insurance recoveries in determining the estimated costs of the cleanup. The progress of future remediation efforts cannot be predicted with certainty, and these costs may change. We believe that the potential liability, if any, in excess of amounts already accrued, will not have a material adverse effect on our financial condition or results of operations.

Other Matters

We are a defendant or plaintiff in various other actions that arose in the normal course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on our financial condition or results of operations.

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

No matters were submitted to a vote of security holders during the fourth quarter of the fiscal year covered by this report.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock (symbol "AMD") is listed on the New York Stock Exchange. On February 22, 2005, there were 7,653 registered holders of our common stock. We have never paid cash dividends on our stock and may be restricted from doing so pursuant to the loan agreement that we entered into with several domestic financial institutions. In addition, under the July 2003 Spansion Term Loan, Spansion is prohibited from paying dividends to us in certain circumstances, and under the Fab 36 Loan Agreements, AMD Fab 36 KG and the affiliated limited partners are generally prohibited from paying any dividends or other payments to us. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" beginning on page 20, below. The high and low sales price per share of common stock (based on the intra-day high and low sales price) were as follows:

	<u>High</u>	<u>Low</u>
Fiscal year ended December 28, 2003		
First quarter	\$ 7.79	\$ 4.78
Second quarter	8.59	5.80
Third quarter	12.87	6.25
Fourth quarter	18.50	10.52
Fiscal year ended December 26, 2004		
First quarter	\$ 17.50	13.60
Second quarter	17.60	13.65
Third quarter	16.00	10.76
Fourth quarter	24.95	12.22

The information under the caption, "Equity Compensation Plan Information," in our Proxy Statement for our Annual Meeting of Stockholders to be held on April 28, 2005 (2005 Proxy Statement) is incorporated herein by reference.

During 2004, we did not sell any of our equity securities that were not registered under the Securities Act of 1933, as amended, except as previously disclosed by us in a Current Report on Form 8-K or a Quarterly Report on Form 10-Q.

[Table of Contents](#)

ITEM 6. SELECTED FINANCIAL DATA

Five Years Ended December 26, 2004
(In thousands except per share amounts)

	2004 ⁽¹⁾	2003 ⁽¹⁾	2002	2001	2000
Net Sales	\$ 5,001,435	\$ 3,519,168	\$ 2,697,029	\$ 3,891,754	\$ 4,644,187
Expenses:					
Cost of sales	3,032,585	2,327,063	2,105,661	2,589,747	2,514,637
Research and development	934,574	852,075	816,114	650,930	641,799
Marketing, general and administrative	807,011	587,307	670,065	620,030	599,015
Restructuring and other special charges (recoveries), net	5,456	(13,893)	330,575	89,305	—
	4,779,626	3,752,552	3,922,415	3,950,012	3,755,451
Operating income (loss)	221,809	(233,384)	(1,225,386)	(58,258)	888,736
Gain on sale of Legerity	—	—	—	—	336,899
Interest income and other, net	(31,150) ⁽²⁾	21,116	32,132	25,695	86,301
Interest expense	(112,328)	(109,960)	(71,349)	(61,360)	(60,037)
Income (loss) before income taxes, minority interest, equity in net income of joint venture and extraordinary item	78,331	(322,228)	(1,264,603)	(93,923)	1,251,899
Minority interest in loss of subsidiary	18,663 ⁽¹⁾	44,761 ⁽¹⁾	—	—	—
Provision (benefit) for income taxes	5,838	2,936	44,586 ⁽⁴⁾	(14,463)	256,868
Income (loss) before equity in net income of joint venture and extraordinary item	91,156	(280,403)	(1,309,189)	(79,460)	995,031
Equity in net income of joint venture	—	5,913	6,177	18,879	11,039
Income (loss) before extraordinary item	91,156	(274,490)	(1,303,012)	(60,581)	1,006,070
Extraordinary item—debt retirement, net of tax benefit	—	—	—	—	(23,044)
Net income (loss)	\$ 91,156	\$ (274,490)	\$ (1,303,012)	\$ (60,581)	\$ 983,026
Net income (loss) per share					
Basic—income (loss) before extraordinary item	\$ 0.25	\$ (0.79)	\$ (3.81)	\$ (0.18)	\$ 3.25
Diluted—income (loss) before extraordinary item	\$ 0.25	\$ (0.79)	\$ (3.81)	\$ (0.18)	\$ 2.95
Basic—income (loss) after extraordinary item	\$ 0.25	\$ (0.79)	\$ (3.81)	\$ (0.18)	\$ 3.18
Diluted—income (loss) after extraordinary item	\$ 0.25	\$ (0.79)	\$ (3.81)	\$ (0.18)	\$ 2.89
Shares used in per share calculation					
Basic	358,886	346,934	342,334	332,407	309,331
Diluted	371,066	346,934	342,334	332,407	350,000
Long-term debt, capital lease obligations and other, less current portion	\$ 2,042,894	\$ 2,328,435	\$ 1,892,404	\$ 672,945	\$ 1,167,973
Total assets ⁽³⁾	\$ 7,844,210	\$ 7,049,772	\$ 5,694,453	\$ 5,636,445	\$ 5,767,735

⁽¹⁾ 2004 and 2003 include consolidated Spansion results and are not comparable to prior years. Minority interest consists primarily of the elimination of income or loss from Fujitsu, the holder of a minority ownership interest in Spansion.

[Table of Contents](#)

- ⁽²⁾ Interest income and other, net includes a charge of approximately \$32 million associated with our exchange of \$201 million of our 4.50% Notes for common stock and a charge of approximately \$14 million in connection with the prepayment of the Dresden Term Loan.
- ⁽³⁾ Total assets as of December 30, 2001 and December 29, 2002 reflect a reclassification of certain prior period amounts to conform to current period presentation.
- ⁽⁴⁾ The 2002 income tax provision was recorded primarily for taxes due on income generated in certain state and foreign tax jurisdictions. No tax benefit was recorded in 2002 on pre-tax losses due to the establishment of a valuation allowance against the remainder of our U.S. deferred tax assets, net of U.S. deferred liabilities, in the fourth quarter, due to the incurrence of continuing substantial operating losses in the U.S.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the consolidated financial statements and related notes as of December 26, 2004 and December 28, 2003, and for each of the three years in the period ended December 26, 2004, which are included in this annual report. Certain prior period amounts have been reclassified to conform to the current period presentation.

Overview

We design, manufacture and market industry-standard digital ICs that are used in diverse product applications such as desktop and mobile PCs, workstations, servers, communications equipment such as mobile phones and automotive and consumer electronics. Our products consist primarily of microprocessors and Flash memory devices. We also sell embedded microprocessors for personal connectivity devices and other consumer markets.

In 2004, we continued to focus on customer-centric innovation by developing microprocessor and Flash memory products that assist our customers in adding functionality and enhancing the performance of their products. We continued to design and develop microprocessor products based on AMD64 technology, which allow our customers to protect their existing investments by continuing to use their 32-bit software applications while transitioning to a 64-bit platform. As of December 26, 2004, sales of AMD64-based processors represented approximately one-half of our net sales for the Computation Products segment.

In Flash memory, we continued to manufacture products based on our MirrorBit technology, which we believe will enable our customers to cost effectively include next-generation applications, such as high-resolution cameras and streaming video, on their mobile phone. We also introduced floating gate memory products manufactured on 110-nanometer technology and substantially completed the integration of our and Fujitsu's Flash memory operations in Spansion.

We also continued to devote resources to develop advanced manufacturing process technologies. During 2004, we successfully transitioned to smaller manufacturing geometries for both our microprocessor and Flash memory products. As of December 26, 2004, we were manufacturing our microprocessor products using primarily 90-nanometer technology and we were manufacturing our highest density and performance Flash memory products on 110-nanometer floating gate and MirrorBit technology.

In 2004, despite a net loss in the fourth quarter, we returned to a full year of profitability. Total net sales for 2004 of \$5.0 billion increased 42 percent compared with net sales of \$3.5 billion for 2003. This increase was driven primarily by increased sales of microprocessors and Flash memory products across all geographies as well as the effects of consolidating Spansion's results of operations, which include sales by Spansion to Fujitsu, for the twelve months in 2004 as compared to six months in 2003.

Our transition to smaller manufacturing process geometries for both our microprocessor and Flash memory products contributed to lower manufacturing costs per unit and higher overall gross margins, which, along with increased net sales, contributed to a net income of \$91 million in 2004 compared to a net loss of \$274 million in 2003.

We also substantially completed the construction of Fab 36, our 300-millimeter wafer fabrication facility in Dresden, Germany and we are currently in the process of installing equipment. We believe the new capacity provided by this facility, which we expect to be in volume production in 2006, will allow us to satisfy anticipated demand for our microprocessors.

However, in 2004, the cyclical Flash memory market posed unique challenges for us. In the second half of 2004, Memory Products net sales decreased by \$259 million, compared to the first half of 2004. Factors that

[Table of Contents](#)

contributed to this decline included aggressive pricing by competitors and an imbalance in the supply and demand for Flash memory products. In addition, decreased demand from the wireless handset market in Asia, in part due to channel inventory accumulation by wireless handset OEMs in China, contributed to a decline in Memory Products net sales during the third quarter of 2004. The down-turn in the overall Flash memory market, lower than expected sales in Japan and a delay in our qualification of a Flash memory product for the wireless category contributed to lower Memory Products net sales during the fourth quarter of 2004.

For 2005, we believe critical success factors include: continuing to increase market acceptance of our AMD64 technology, particularly in the enterprise segment; taking products based on our second-generation MirrorBit technology to market and effectively ramping such products to mass production on a timely basis; strengthening our relationships with key customers and establishing relationships with new customers that are industry leaders in their markets; successfully developing and continuing to transition 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, including dual-core processors, on a timely basis and increasing our share of those markets; developing and introducing new Flash memory products on a timely basis; controlling costs; increasing the adoption of MirrorBit technology; and expanding our participation in high-growth global markets, including China, Latin America, India and Eastern Europe.

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, the primary factors that resulted in those changes, and how certain accounting principles, policies and estimates affect our financial statements.

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 generally accepted United States accounting principles. 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 revenues, inventories, asset impairments, restructuring charges and income taxes. 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.

We believe the following critical accounting policies are the most significant to the presentation of our financial statements and require the most difficult, subjective and complex judgments.

Revenue Reserves. We record a provision for estimated sales returns and allowances on product sales and a provision for estimated future price reductions in the same period that the related revenues are recorded. We base these estimates on actual historical sales returns, allowances, historical price reductions, market activity, and other known or anticipated trends and factors. These estimates are subject to management's judgment, and actual provisions could be different from our estimates and current provisions, resulting in future adjustments to our revenues and operating results.

Inventory Valuation. At each balance sheet date, we evaluate our ending inventories for excess quantities and obsolescence. This evaluation includes analysis of sales levels by product and projections of future demand. These projections assist us in determining the carrying value of our inventory and are also used for near-term factory production planning. Inventories on hand in excess of forecasted demand of generally six months or less, are not valued. In addition, we write off inventories that are considered obsolete. We adjust remaining specific inventory balances to approximate the lower of our standard manufacturing cost or market value. Among other

[Table of Contents](#)

factors, management considers forecasted demand in relation to the inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining obsolescence and net realizable value. If we anticipate future demand or market conditions to be less favorable than our projections as forecasted, additional inventory write-downs may be required, and would be reflected in cost of sales in the period the revision is made. This would have a negative impact on our gross margins in that period. If in any period we are able to sell inventories that were not valued or that had been written off in a previous period, related revenues would be recorded without any offsetting charge to cost of sales, resulting in a net benefit to our gross margin in that period. To the extent these factors materially affect our gross margins, we would disclose them in our filings with the SEC.

Impairment of Long-Lived Assets. We consider no less frequently than quarterly whether indicators of impairment of long-lived assets are present. These indicators may include, but are not limited to, significant decreases in the market value of an asset and significant changes in the extent or manner in which an asset is used. If these or other indicators are present, we determine whether the estimated undiscounted cash flows attributable to the assets in question are less than their carrying value. If less, we recognize an impairment loss based on the excess of the carrying amount of the assets over their respective fair values. Fair value is determined by discounted future cash flows, appraisals or other methods. If the asset determined to be impaired is to be held and used, we recognize an impairment loss through a charge to our operating results to the extent the present value of anticipated net cash flows attributable to the asset is less than the asset's carrying value, which we depreciate over the remaining estimated useful life of the asset. We may incur additional impairment losses in future periods if factors influencing our estimates of the undiscounted cash flows change.

Restructuring Charges. We record and account for our restructuring activities following formally approved plans that identify the actions and timeline over which the restructuring activities will occur. Our remaining restructuring accruals include estimates pertaining to facility exit costs and subleasing assumptions resulting from exiting certain facilities. We review these accruals on a quarterly basis and adjust these accruals when changes in facts and circumstances suggest actual amounts will differ from our estimates. Although we do not anticipate significant changes, actual costs may be different than our original or revised estimates. These changes in estimates can result in increases or decreases to our results of operations in future periods and would be presented on the restructuring and other special charges (recoveries), net, line of our consolidated operating statements.

Income Taxes. In determining taxable income for financial statement reporting purposes, we must make certain estimates and judgments. These estimates and judgments are applied in the calculation of certain tax liabilities and in the determination of the recoverability of deferred tax assets, which arise from temporary differences between the recognition of assets and liabilities for tax and financial statement reporting purposes.

We must assess the likelihood that we will be able to recover our deferred tax assets. If recovery is not likely, we must increase our provision for taxes by recording a charge to income tax expense, in the form of a valuation allowance, for the deferred tax assets that we estimate will not ultimately be recoverable. We consider past performance, future expected taxable income and prudent and feasible tax planning strategies in determining the need for a valuation allowance. In fiscal 2002, we recorded a valuation allowance against all of our U.S. deferred tax assets, net of deferred tax liabilities, based on past performance and the likelihood of realization of our deferred tax assets at the time. In fiscal 2003, we continued to provide a valuation allowance against all of our U.S. deferred tax assets, net of deferred tax liabilities. In fiscal 2004, a portion of the valuation allowance was utilized as a result of net operating profits. If we later determine that it is more likely than not that the net deferred tax assets will be realized, an appropriate amount of the previously provided valuation allowance will be reversed, resulting in a benefit to our earnings. Such benefits would be recorded on the income tax provision (benefit) line of our statement of operations.

In addition, the calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax rules and the potential for future adjustment by the Internal Revenue Service or other taxing

[Table of Contents](#)

jurisdiction. If our estimates of these taxes are greater or less than actual results, an additional tax benefit or charge will result.

Results Of Operations

In March 1993, we and Fujitsu formed Fujitsu AMD Semiconductor Limited, a joint venture for the purpose of manufacturing Flash memory devices. Through the Manufacturing Joint Venture, we and Fujitsu constructed and operated advanced integrated circuit manufacturing facilities in Aizu-Wakamatsu, Japan. Effective June 30, 2003, we and Fujitsu executed agreements to integrate our Flash memory operations. The Manufacturing Joint Venture was contributed to a new entity, Spansion LLC, which is owned 60 percent by us and 40 percent by Fujitsu. As a result of this transaction, we began consolidating Spansion's results of operations on June 30, 2003. Prior to June 30, 2003, we accounted for our share of the Manufacturing Joint Venture's operating results under the equity method.

As Spansion 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's results of operations. Accordingly, our operating results for the years ended December 26, 2004 and December 28, 2003 are not fully comparable with our results for prior periods. Also, because we have a 60 percent controlling interest in Spansion, Fujitsu's 40 percent share in the net income (loss) of Spansion is reflected as a minority interest adjustment to our consolidated financial statements. This minority interest adjustment does not correspond to operating income (loss) of our Memory Products segment because operating income (loss) for our Memory Products segment includes operations incremental to those of Spansion. In addition, the minority interest calculation is based on Spansion's net income (loss) rather than operating income (loss).

We review and assess operating performance using segment revenues 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, we had two reportable segments: the Core Products segment, which consisted of the microprocessor, memory products and other IC products operating segments, and the Foundry Services segment, which consisted of fees for products sold to Vantis Corporation, our former programmable logic devices subsidiary, and Legerity Inc., our former voice communication products subsidiary.

Beginning in the third quarter of 2003, we changed our 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 Flash memory products. In addition, in the fourth quarter of 2004, we began presenting our Personal Connectivity Solutions operating segment as a separate reportable segment because the operating loss from this operating segment exceeded 10 percent of the combined profit of all our operating segments and therefore this operating segment became a reportable segment under the requirements of Statement of Financial Standards 131, "Segment Reporting" (FAS 131). Previously, we included our Personal Connectivity Solutions operating segment in our All Other category. The Personal Connectivity Solutions segment includes primarily low power, high performance x86 and MIPS architecture-based embedded microprocessors. In addition to our three reportable segments, we also have the All Other category, which is not a reportable segment, and which 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 did not exist prior to June 30, 2003, the results of operations for periods prior to June 30, 2003 did not include the consolidation of Spansion's operations. Accordingly, the segment operating information for the Memory Products segment for the year ended December 26, 2004, is not comparable to the reclassified segment information for the prior periods presented.

We use a 52- to 53-week fiscal year ending on the last Sunday in December. The years ended December 26, 2004, December 28, 2003 and December 29, 2002, each included 52 weeks.

[Table of Contents](#)

The following is a summary of our net sales and operating income (loss) by segment and category for 2004, 2003 and 2002.

	2004	2003	2002
	(in millions)		
Net sales			
Computation Products	\$2,528	\$1,960	\$1,756
Memory Products	2,342	1,419	741
Personal Connectivity Solutions	131	140	166
All Other	—	—	34
Total Net Sales	\$5,001	\$3,519	\$2,697
Operating income (loss)			
Computation Products	\$303	\$(23)	\$(661)
Memory Products	35	(189)	(159)
Personal Connectivity Solutions	(72)	(14)	(25)
All Other	(44)	(7)	(380)
Total Operating Income (Loss)	\$222	\$(233)	\$(1,225)

Computation Products

Computation Products net sales of \$2.5 billion in 2004 increased 29 percent compared to net sales of \$2.0 billion in 2003. The increase was primarily due to a 19 percent increase in average selling prices and a nine percent increase in microprocessor unit shipments. The increase in average selling prices was primarily due to increased sales of our higher-priced AMD64-based processors, particularly our AMD Athlon 64 processors, which contributed to a richer product mix. Similarly, the increase in unit shipments reflected the increased demand for these processors. As of December 26, 2004, sales of AMD64-based processors represented approximately one-half of our net sales for the Computation Products segment. Sales increased across all geographic regions, and growth was particularly strong in North America and Asia.

Computation Products net sales of \$2.0 billion in 2003 increased 12 percent compared to net sales of \$1.8 billion in 2002. The increase was primarily due to a 15 percent increase in microprocessor unit shipments due primarily to increased demand from our OEM customers. The increase in net sales was partially offset by a decline of four percent in the average selling prices.

Computation Products operating income of \$303 million in 2004 increased by \$326 million compared to an operating loss of \$23 million in 2003. The increase was primarily due to a 29 percent increase in net sales, partially offset by a 12 percent increase in operating expenses. Operating expenses increased due primarily to an increase in marketing and cooperative advertising costs of \$79 million in connection with our AMD64-based products, a nine percent increase in unit shipments, and a \$28 million increase in research and development costs. The increase in research and development costs was due primarily to a \$29 million increase in Fab 36 start-up costs and a \$24 million increase in silicon design related to future generations of our microprocessors offset by a \$23 million decrease in Fab 30 research and development activities.

Computation Products operating loss of \$23 million in 2003 improved by \$638 million compared to an operating loss of \$661 million in 2002. The improvement was primarily due to a 12 percent increase in net sales and a decrease in both manufacturing costs of \$330 million and marketing, general and administrative expenses of \$39 million, as a result of our cost reduction initiatives and the 2002 Restructuring Plan. In addition, cooperative advertising and marketing expenses decreased by \$55 million from 2002.

[Table of Contents](#)

Memory Products

Memory Products net sales of \$2.3 billion in 2004 increased 65 percent compared to net sales of \$1.4 billion in 2003. The increase was primarily due to increased demand for Flash memory products across all geographies, which resulted in a nine percent increase in average selling prices, and the effect of consolidating Spansion's results of operations, which include Spansion's sales to Fujitsu of \$1.1 billion for 12 months in 2004 compared to \$449 million for six months in 2003. In the second half of 2003, demand for Flash memory products began to increase significantly, and this trend continued through the first half of 2004. In the second half of 2004, however, our Memory Products net sales declined due to aggressive pricing by competitors and an imbalance in the supply and demand for Flash memory products. In addition, decreased demand from the wireless handset market in Asia, due in part to channel inventory accumulation by wireless OEMs in China, contributed to a decline in Memory Products net sales during the third quarter. The downturn in the overall Flash memory market, lower than expected sales in Japan and a delay in qualifying a new Flash memory product for the wireless category contributed to lower Memory Products net sales during the fourth quarter. Further quantification of the breakdown in the increase in net sales is not practical due to the reorganization of geographical sales territories between AMD and Fujitsu.

Memory Products net sales of \$1.4 billion in 2003 increased 92 percent compared to net sales of \$741 million in 2002. The increase was primarily due to the effect of consolidating Spansion's results of operations, which include Spansion's sales to Fujitsu during the last six months of fiscal 2003 and increased demand for Flash memory products, particularly in the second half of 2003. Further quantification of the breakdown in the increase in net sales is not practical due to the reorganization of geographical sales territories between AMD and Fujitsu.

Memory Products operating income of \$35 million increased \$224 million from an operating loss of \$189 million in 2003. The increase was primarily due to the effect of consolidating Spansion's results of operations, which include Spansion's sales to Fujitsu, for 12 months in 2004 compared to six months in 2003. In addition, our manufacturing costs decreased due to our transition to 110-nanometer process technology for certain of our Flash memory products in 2004 and as a result of increased shipments of Flash memory products based on MirrorBit technology, which are less expensive to manufacture than Flash memory products based on floating gate technology. Further quantification of the changes is not practical due to the consolidation of Spansion on June 30, 2003.

Memory Products operating loss of \$189 million in 2003 increased \$30 million from an operating loss of \$159 million in 2002. Further quantification of the changes is not practical due to the consolidation of Spansion on June 30, 2003.

Personal Connectivity Solutions

Personal Connectivity Solutions (PCS) net sales of \$131 million in 2004 decreased seven percent compared to net sales of \$140 million in 2003. The decrease was primarily due to a \$43 million decrease in sales of certain end-of-life embedded microprocessors, partially offset by a \$33 million increase in sales of AMD Geode products. We acquired the Geode product line from National Semiconductor in August 2003. Accordingly, the increase in sales of AMD Geode products in 2004 was due to the fact that in 2004 we had 12 months of sales whereas in 2003 we had approximately four months of sales.

PCS net sales of \$140 million in 2003 decreased 15 percent compared to net sales of \$166 million in 2002. The decrease was primarily due to a \$53 million decrease in sales of certain end-of-life embedded microprocessors and networking products, partially offset by a \$28 million increase in sales of AMD Geode and wireless products.

PCS operating loss of \$72 million in 2004 increased compared to an operating loss of \$14 million in 2003. The increase in the operating loss was primarily due to a \$48 million increase in operating expenses. Operating

[Table of Contents](#)

expenses increased due to an increase of approximately \$35 million in manufacturing costs as a result of a change in product mix, and an aggregate increase of \$14 million in research and development expenses and marketing, general and administrative expenses as a result of activities related to our AMD Geode products and other product development. Manufacturing costs increased primarily because we manufactured more AMD Geode products, which generally are more expensive to manufacture than our other embedded processors.

PCS operating loss of \$14 million in 2003 improved compared to the operating loss of \$25 million in 2002. The improvement was primarily due to sales of \$12 million of certain embedded microprocessors and networking products that had been previously written off.

All Other Category

There were no net sales generated in the All Other category in 2003 or 2004.

All Other net sales of zero in 2003 decreased from \$34 million in 2002 due to the discontinuation of our Foundry Services in 2002.

All Other operating loss of \$44 million in 2004 increased from \$6 million in 2003, primarily due to an increase of approximately \$30 million in corporate bonus and profit sharing expense. In addition, All Other operating loss in 2004 included approximately \$5 million of restructuring and other special charges, while in 2003 we had a \$14 million credit adjustment to the restructuring charge.

All Other operating loss of \$6 million in 2003 improved by \$374 million compared to an operating loss of \$380 million in 2002, primarily due to \$331 million of restructuring and other special charges included in the All Other category for 2002, compared to a \$14 million credit adjustment to the restructuring charge in 2003.

Comparison of Gross Margin, Expenses, Interest Income and Other, Net, Interest Expense and Taxes

The following is a summary of certain consolidated statement of operations data for 2004, 2003 and 2002:

	2004	2003	2002
		(in millions except for percentages)	
Cost of sales	\$3,033	\$2,327	\$2,106
Gross margin	39%	34%	22%
Research and development expense	\$ 935	\$ 852	\$ 816
Marketing, general and administrative expense	807	587	670
Restructuring and other special charges (recoveries), net	5	(14)	331
Interest income and other, net	31	(21)	(32)
Interest expense	112	110	71
Income tax provision	6	3	45

Gross margin percentage increased to 39 percent in 2004 compared to 34 percent in 2003. The increase in gross margin was primarily due to an increase in net sales of 42 percent and lower unit manufacturing costs resulting from our transition to smaller, more cost efficient, manufacturing process technologies for both of our microprocessors and Flash memory products. Further quantification of the improvement in gross margin percentage is not practical due to the consolidation of Spansion's operating results as of June 30, 2003.

Gross margin percentage increased to 34 percent in 2003 compared to 22 percent in 2002. The increase in gross margin was primarily due to an increase in net sales of 30 percent, accompanied by an increase in cost of sales of only ten percent. Our cost of sales increased at a lower rate than net sales primarily due to cost reductions from the 2002 Restructuring Plan and other cost reduction initiatives. In addition, microprocessor unit sales

[Table of Contents](#)

increased 15 percent while average selling prices of microprocessor products decreased by four percent, and we realized revenues of \$63 million, or approximately two gross margin percentage points, from the sale of microprocessor products that had been previously written off. Further quantification of the improvement in gross margin percentage is not practical due to the consolidation of Spansion's operating results as of June 30, 2003.

We amortize capital grants and allowances, interest subsidies and research and development 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 a credit to research and development expenses and cost of sales. The credit to cost of sales totaled \$67.1 million in 2004, \$46.2 million in 2003 and \$37.5 million in 2002.

Research and development expenses of \$935 million in 2004 increased ten percent from \$852 million in 2003 due in part to higher research and development expenses as result of the consolidation of Spansion's results of operation, an increase in start-up costs of approximately \$29 million associated with the Fab 36 project and a \$24 million increase in silicon design related to future generations of our microprocessors. These factors were partially offset by a \$23 million decrease in Fab 30 research and development activities. Research and development expenses of \$852 million in 2003 increased four percent from \$816 million in 2002, due in part to higher research and development expenses as a result of the consolidation of Spansion's results of operation, \$23 million in research and development efforts related to new microprocessors, and \$58 million paid to IBM to jointly develop new process technologies for use in future microprocessor products. The increases in research and development expenses were offset by a \$35 million reduction in research and development costs, primarily due to the reduction of research and development activities associated with our PCS products and the absence of the \$42 million charge representing amounts paid to IBM in 2002 in exchange for consulting services relating to optimizing the performance of our manufacturing processes.

We amortize capital grants and allowances, interest subsidies and research and development 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 a credit to research and development expenses and cost of sales. The credit to research and development expenses totaled \$20.7 million in 2004, \$29 million in 2003 and \$21.8 million in 2002.

Marketing, general and administrative expenses of \$807 million in 2004 increased 37 percent compared to \$587 million in 2003, primarily due to increased sales and cooperative advertising and marketing expenses of \$112 million primarily associated with our AMD 64-based processors, expenses from Spansion of \$153 million for 12 months of 2004 compared to \$78 million for six months in 2003 and new regulatory compliance costs of \$15 million.

Marketing, general and administrative expenses of \$587 million in 2003 decreased 12 percent compared to \$670 million in 2002. The decrease was primarily due to decreased cooperative advertising and marketing expenses of \$55 million and cost reductions from the 2002 Restructuring Plan and other cost reduction initiatives.

Effects of 2002 Restructuring Plan

In December 2002, we began implementing a restructuring plan (the 2002 Restructuring Plan) to further align our cost structure to industry conditions resulting from weak customer demand and industry-wide excess inventory.

As part of this plan, and as a result of our agreement with IBM to jointly develop future generations of our microprocessor manufacturing process technology, we ceased microprocessor related research and development in the SDC and eliminated most of the related resources, including the sale or abandonment of certain equipment used in the SDC.

[Table of Contents](#)

The 2002 Restructuring Plan resulted in the consolidation of facilities, primarily at our Sunnyvale, California site and at sales offices worldwide. We vacated and are attempting to sublease certain facilities currently occupied under long-term operating leases through 2011. We also terminated the implementation of certain partially completed enterprise resource planning (ERP) software and other information technology implementation activities, resulting in the abandonment of certain software, hardware and capitalized development costs.

Pursuant to the 2002 Restructuring Plan, we recorded restructuring costs and other special charges of \$330.6 million in the fourth quarter of 2002, consisting primarily of \$68.8 million of anticipated severance and fringe benefit costs, an asset impairment charge of \$32.5 million relating to a license that has no future use because of its association with discontinued microprocessor development activities, asset impairment charges of \$30.6 million resulting from the abandonment of equipment previously used in microprocessor process development and manufacturing activities, anticipated exit costs of \$138.9 million almost wholly related to vacating and consolidating our facilities and a charge of \$55.5 million resulting from the abandonment of partially completed ERP software and other information technology implementation activities.

During 2003, management approved the sale of additional equipment primarily used in the SDC that was identified as no longer useful in our operations. As a result, we recorded approximately \$11 million of asset impairment charges in the first quarter of 2003, including \$3.3 million of charges for decommission costs necessary to complete the sale of the equipment.

During 2003, we also revised our estimates of the number of positions to be eliminated pursuant to the 2002 Restructuring Plan from 2,000 to 1,800 in response to the additional resources required due to the Spansion transaction. As a result, we reversed \$8.9 million of the estimated severance and fringe benefit accrual. As of December 26, 2004, 1,786 employees had been terminated pursuant to the 2002 Restructuring Plan resulting in cumulative cash payments of \$60 million in severance and employee benefit costs.

During 2004, we adjusted the restructuring accrual related to the 2002 Restructuring Plan, which resulted in an additional \$5.2 million restructuring charge for the period. The adjustment was primarily related to a change in our estimate of potential sublease opportunities associated with abandoned facilities located in Sunnyvale, California.

With the exception of exit costs consisting primarily of remaining lease payments on abandoned facilities net of estimated sublease income that are payable through 2011, we have completed the activities associated with the 2002 Restructuring Plan. With the formation of Spansion and other business changes, we no longer track the overall cost savings from the 2002 Restructuring Plan because we do not believe this information would be useful.

[Table of Contents](#)

The following table summarizes activities under the 2002 Restructuring Plan through December 26, 2004:

	Severance and Employee Benefits	Asset Impairment	Exit and Equipment Decommission Costs (in thousands)	Other Restructuring Charges	Total
2002 provision	\$ 68,770	\$ 118,590	\$ 138,900	\$ 4,315	\$ 330,575
Non-cash charges	—	(118,590)	—	—	(118,590)
Cash charges	(14,350)	—	(795)	—	(15,145)
Accruals at December 29, 2002	\$ 54,420	—	\$ 138,105	\$ 4,315	\$ 196,840
2003 provision	—	\$ 7,791	\$ 3,314	—	\$ 11,105
Cash charges	(38,816)	—	(20,796)	(4,300)	(63,912)
Non-cash charges	—	(7,791)	—	—	(7,791)
Non-cash adjustments	(8,864)	—	—	(15)	(8,879)
Accruals at December 28, 2003	\$ 6,740	—	\$ 120,623	—	\$ 127,363
Cash charges	(6,789)	—	(20,150)	—	(26,939)
Non-cash adjustments	\$ 49	—	\$ 5,203	—	\$ 5,252
Accruals at December 26, 2004	—	—	\$ 105,676	—	\$ 105,676

Effects of 2001 Restructuring Plan

In 2001, in response to the continued slowdown in the semiconductor industry and a resulting decline in revenues, we implemented a restructuring plan (the 2001 Restructuring Plan). We completed our execution of the 2001 Restructuring Plan as of December 26, 2004.

During 2003, we reduced the estimated accrual of the facility and equipment decommission costs by \$12.2 million based on the most current information available and we realized a recovery of approximately \$3.9 million for the excess of the sale price over the estimated fair value of equipment that we determined was impaired as a result of the 2001 Restructuring Plan. Both amounts were included in restructuring and other special charges (recoveries), net. With the formation of Spansion and other business changes, we no longer track the overall cost savings from this 2001 Restructuring Plan because we do not believe the information would be useful.

The following table summarizes activity under the 2001 Restructuring Plan from December 30, 2001 through December 26, 2004:

	Severance and Employee Benefits	Facilities and Equipment Decommission Costs (in thousands)	Other Facilities Exit Costs	Total
Accruals at December 30, 2001	\$ 26,622	\$ 15,500	\$ 646	\$ 42,768
Cash charges	(26,622)	(445)	—	(27,067)
Accruals at December 29, 2002	\$ —	\$ 15,055	\$ 646	\$ 15,701
Non-cash adjustments	—	(11,574)	(646)	(12,220)
Cash charges	—	(2,485)	—	(2,485)
Accruals at December 28, 2003	\$ —	\$ 996	\$ —	\$ 996
Cash charges	—	(991)	—	(991)
Non-cash adjustments	—	(5)	—	(5)
Accruals at December 26, 2004	\$ —	\$ —	\$ —	\$ —

[Table of Contents](#)

Interest Income and Other, Net

We recorded a net charge of interest income and other, net of \$31 million in 2004 compared to interest income and other, net of approximately \$21 million in 2003. This charge was due primarily to a charge of approximately \$32 million related to a series of transactions pursuant to which we exchanged \$201 million of our 4.50% Convertible Senior Notes due 2007 (the 4.50% Notes) for our common stock. The charge represented the difference between the fair value of the common stock issued in the transactions and the fair value of common stock issuable pursuant to the original conversion terms of the 4.50% Notes. In addition, interest income and other, net, in 2004 included a charge of approximately \$14 million in connection with our prepayment of the Dresden Term Loan, and a loss of approximately \$6 million during the second quarter of 2004 resulting from the mark-to-market of certain foreign currency forward contracts that we used as economic hedges of forecasted capital contributions to AMD Fab 36 KG, which do not qualify as accounting hedges.

Interest income and other, net, of approximately \$21 million in 2003 decreased 34 percent from \$32 million in 2002. The decrease was primarily due to a decrease in investment income of \$16 million caused by lower cash equivalents and short-term investment balances and a charge of \$2.3 million in 2003 for other-than-temporary declines in our equity investments. This decrease was offset by a gain of approximately \$6 million based on the difference between the carrying value and fair value of assets contributed by us to Spansion. Fujitsu now owns a 40 percent interest in these assets. The gain on the deemed sale of these assets to Spansion was limited to the difference in carrying value of our interest in the assets following the completion of the transaction and the carrying value of the assets immediately prior to the transaction.

Interest Expense

Interest expense of \$112 million in 2004 was flat compared to \$110 million in 2003. On October 29, 2004, we sold \$600 million of 7.75% Senior Notes due 2012 (the 7.75% Notes). Interest accrued on the 7.75% Notes was partially offset by the absence of interest expense, as of November 2, 2004, for amounts outstanding under the Dresden Term Loan, which we prepaid on November 2, 2004, and the absence of interest expense with respect to \$201 million of our 4.50% Notes, which we exchanged for our common stock in a series of transactions during the fourth quarter of 2004. We also capitalized interest during 2004 of \$9 million in connection with our Fab 36 construction activities in Dresden, Germany.

Interest expense of \$110 million in 2003 increased 55 percent compared to \$71 million in 2002. The increase was due primarily to annual interest charges of \$18 million on our 4.50% Notes sold in November 2002, \$5 million of interest on \$110 million outstanding under our revolving credit facility, and the Spansion transaction, which resulted in additional interest expense of approximately \$9 million in 2003. In addition, in 2002 we capitalized interest of \$10.7 million on continued expansion and facilitization of Fabs 25 and 30 compared to \$1.5 million in 2003.

Income Taxes

We recorded an income tax provision of \$6 million in 2004, \$3 million in 2003 and \$45 million in 2002. The income tax provision in 2004 primarily reflects U.S. income taxes, including taxes on the dividends repatriated from controlled foreign corporations, partially offset by foreign tax benefits because of losses in certain foreign jurisdictions. The income tax provision in 2003 primarily reflected income tax expense generated in certain foreign jurisdictions, offset by a benefit of a U.S. federal tax refund from a carryback claim we filed in 2003. The 2002 income tax provision was recorded primarily for taxes due on income generated in certain foreign tax jurisdictions and the establishment of a valuation allowance against the remainder of our U.S. deferred tax assets, net of U.S. deferred tax liabilities in the fourth quarter, due to continuing substantial operating losses in the United States.

As of December 26, 2004, we had federal and state net operating loss carryforwards of approximately \$930 million and \$45 million. We also had foreign loss carryforwards of approximately \$88 million. We also had

[Table of Contents](#)

federal and state tax credit carryforwards of approximately \$246 million and \$86 million. The net operating loss and tax credit carryforwards will expire at various dates beginning in 2005 through 2024, if not utilized. We maintain a full valuation allowance against all our net U.S. federal and state deferred tax assets and certain of our foreign deferred tax assets (\$694 million at December 26, 2004) because of our history of recent losses.

Other Items

International sales as a percent of net sales were 79 percent in 2004, 80 percent in 2003 and 73 percent in 2002. During 2004 and 2003, approximately 22 and 15 percent of our net sales were denominated in currencies other than the U.S. dollar, primarily the Japanese yen, as compared to one percent during 2002. The increase in the percentage in 2004 and 2003 compared to 2002 was primarily due to the consolidation of Spansion's results of operations, effective June 30, 2003, which include sales by Spansion 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 euro. 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 and Fab 36 manufacturing costs. The impact on our operating results from changes in foreign currency rates individually and in the aggregate has not been material, on an annual basis, principally as a result of our foreign currency hedging activities. See "Quantitative and Qualitative Disclosure About Market Risk," below.

FINANCIAL CONDITION

Our cash, cash equivalents and short-term investments at December 26, 2004 totaled \$1.2 billion, which included approximately \$196 million in cash, cash equivalents, and short-term investments of Spansion. Spansion's operating agreement governs its ability to use this cash 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 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's taxable income for each fiscal year. Any remaining cash balance after the tax liability distribution would be used by Spansion to fund its operations in accordance with its budget. If any cash remains, it must be used to repay Spansion's outstanding debt to us and Fujitsu. Any remaining cash may be distributed at the discretion of Spansion'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.

Due to our repayment of amounts outstanding under the Dresden Term Loan on November 2, 2004 and the related termination of the Dresden Loan Agreements effective December 23, 2004, we are no longer required to maintain a compensating cash balance. Therefore, as of December 26, 2004, our compensating cash balance was zero as compared to \$218 million as of December 28, 2003.

Net Cash Provided by (Used in) Operating Activities

Net cash provided by operating activities was approximately \$1.1 billion in 2004. Net income of \$91 million, non-cash charges, consisting primarily of \$1.2 billion of depreciation and amortization expense and a \$32 million charge associated with our exchange of \$201 million of our 4.50% Notes for common stock, contributed to the positive cash flows from operations. The net changes in operating assets in 2004 as compared to 2003 included an increase in accounts receivable due to higher net sales, and increased inventories due primarily to an increase in microprocessor inventories resulting from a higher percentage of AMD64-based processors and improved market conditions. For fiscal 2004, Fujitsu accounted for approximately 23 percent of our consolidated accounts receivable and approximately 22 percent of our consolidated gross sales.

Net cash provided by operating activities was approximately \$296 million in 2003. Although we had a net loss of \$274 million for the year, adjustments for non-cash charges, which were primarily depreciation and

[Table of Contents](#)

amortization, resulted in a positive cash flow from operations. The net changes in operating assets in 2003 as compared to 2002 included an increase in accounts receivable due to higher net sales and the consolidation of Spansion's results of operations, which include Spansion's sales to Fujitsu, and an increase in net inventory due to the consolidation of Spansion's results of operations. For fiscal 2003, Fujitsu accounted for approximately 31 percent of our consolidated accounts receivable and approximately 13 percent of our consolidated gross sales. In 2003, the net changes in payables and accrued liabilities primarily included payments of \$90 million for a technology license from IBM and approximately \$64 million of payments under the 2002 Restructuring Plan.

Net cash used in operating activities was \$120 million in 2002, primarily as a result of our net loss of \$1.3 billion, adjusted by non-cash charges. Changes in operating assets and liabilities in 2002 as compared to 2001 were attributable to a decrease in accounts receivable due to a 31 percent decrease in net sales. At December 29, 2002, inventory increased as compared to December 29, 2001 due to an increase of products to support anticipated 2003 sales, a change in the mix of inventory, and the impact of Flash memory production from Fab 25 following its conversion from a microprocessor manufacturing facility.

Net Cash Provided by (Used in) Investing Activities

Net cash used in investing activities was \$1.6 billion in 2004, primarily as a result of \$1.4 billion used to purchase property, plant and equipment, including approximately \$569 million used to construct Fab 36, and a net cash outflow of \$150 million from sales and purchases of available-for-sale securities, offset by \$34 million in proceeds from sales of property, plant and equipment.

Net cash provided by investing activities was \$83 million in 2003, primarily as a result of net cash proceeds of \$482 million from sales and purchases of available-for-sale securities, \$148 million of cash acquired in conjunction with the Spansion transaction and \$30 million in proceeds from sales of property, plant and equipment, offset by \$570 million used to purchase property, plant and equipment.

Net cash used in investing activities was \$854 million in 2002, including \$705 million used for purchases of property, plant and equipment primarily for Fab 30 and Fab 25, \$27 million, net of cash acquired, used to acquire Alchemy Semiconductor, and \$131 million from net purchases of available-for-sale securities, offset by \$9 million of proceeds from sales of property, plant and equipment.

Net Cash Provided by (Used in) Financing Activities

Net cash provided by financing activities was \$413 million in 2004. This amount included \$745 million of proceeds from financing activities, including \$588 million in proceeds, net of \$13 million in debt issuance costs, from the issuance of our 7.75% Notes, approximately \$250 million in investments from the non-affiliated limited partners of AMD Fab 36 KG, \$60 million of proceeds from equipment sale and leaseback transactions, \$30 million of capital investment grants and allowances from the Federal Republic of Germany and the Free State of Saxony for the Fab 36 project, \$124 million in proceeds from the issuance of stock under our Employee Stock Purchase Plan and the exercise of stock options and the elimination of our \$224 million compensating cash balance due to the prepayment of our Dresden Term Loan. These amounts were offset by \$898 million in payments on debt and capital lease obligations, including approximately \$647.2 million used to prepay amounts outstanding under the Dresden Term Loan, including accrued and unpaid interest.

Net cash provided by financing activities was \$267 million in 2003, primarily due to \$245 million received from equipment sale and leaseback transactions completed by Spansion, a \$40 million cash note to Spansion from Fujitsu as part of the Spansion transaction, \$155 million of capital investment allowances received from the Federal Republic of Germany for the Fab 30 project and \$35 million of proceeds from issuance of stock under our Employee Stock Purchase Plan and the exercise of stock options, offset by \$141 million in payments on debt and capital lease obligations, and a \$74 million increase in our compensating cash balance, which represented the minimum cash balance that AMD Saxony was required to maintain in order to comply with the minimum liquidity covenant set forth in the Dresden Term Loan.

[Table of Contents](#)

Net cash provided by financing activities was \$907 million in 2002, primarily due to \$486 million in proceeds, net of \$14 million in debt issuance costs, from the issuance of our 4.75% Debentures, \$391 million in proceeds, net of \$11 million in debt issuance costs, from the issuance of our 4.50% Notes, \$108 million drawn under the July 2003 Spanion Term Loan, net of \$2 million in debt issuance costs, \$120 million drawn under our revolving credit facility, \$21 million in proceeds from equipment lease financings, \$29 million in proceeds from the issuance of stock under our Employee Stock Purchase Plan and the exercise of stock options, and \$76 million of net capital investment allowances and interest subsidies received from the Federal Republic of Germany and the State of Saxony for the Fab 30 project. These amounts were offset by payments of \$325 million on debt and capital lease obligations.

Liquidity

We believe that cash flows from operations and current cash balances, together with currently available credit facilities (see “Revolving Credit Facilities,” below) and external financing, will be sufficient to fund our operations and capital investments in the short term and long term. We also believe that we have sufficient financing arrangements in place to fund the estimated \$2.5 billion required to facilitate Fab 36. See “Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements,” below. Should additional funding be required, such as to meet payment obligations of our long-term debts when due, 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, or from issuances of additional debt or equity 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 quantities or on terms favorable to us.

Revolving Credit Facilities

AMD Revolving Credit Facility

Our revolving credit facility provides for a secured revolving line of credit of up to \$100 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 December 26, 2004, no borrowings were outstanding under our revolving credit facility.

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

- restrictions on our ability to pay cash dividends on our common stock;
- maintain an adjusted tangible net worth (as defined in our revolving credit facility) as follows:

<u>Measurement Date</u>	<u>Amount</u> <u>(in millions)</u>
Last day of each fiscal quarter in 2004	\$ 1,425
Last day of each fiscal quarter in 2005	\$ 1,850
Last day of each fiscal quarter thereafter	\$ 2,000

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 December 31, 2004	(in millions) \$ 950
Four fiscal quarters ending March 31, 2005 and four fiscal quarters ending each fiscal quarter thereafter	\$ 1,050

As of December 26, 2004, net domestic cash, as defined, totaled \$831 million and the preceding financial covenants were not applicable. Our obligations under our revolving credit facility are secured by all of our accounts receivable, inventory, general intangibles (excluding intellectual property) and the related proceeds, excluding Spansion's accounts receivable, inventory and general intangibles.

Spansion Japan Revolving Loan Agreement

In March 2004, Spansion Japan Limited, a subsidiary of Spansion, entered into a revolving credit facility agreement with certain Japanese financial institutions in the aggregate amount of 15 billion yen (approximately \$145 million as of December 26, 2004). Spansion Japan can draw under the facility until March 24, 2005.

The revolving facility consists of two tranches: tranche A in the aggregate amount of up to nine billion yen (approximately \$87 million as of December 26, 2004) and tranche B in the aggregate amount of up to six billion yen (approximately \$58 million as of December 26, 2004). 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. As of December 26, 2004, there were no borrowings outstanding under this facility.

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.

Pursuant to the terms of the revolving credit 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 \$579 million as of December 26, 2004) as of the last day of each fiscal quarter;
- maintain total net income plus depreciation of \$213 million as of the last day of fiscal year 2004; and
- ensure that as of the last day of each of the third and fourth quarter of 2004, 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 120%.

As of December 26, 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

[Table of Contents](#)

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 December 26, 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 \$10 million as of December 26, 2004). As of December 26, 2004, the amount of accounts receivable held in the trust was approximately \$166 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. We used the exchange rate as of December 26, 2004 of 103.62 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 principal contractual cash obligations at December 26, 2004, and is supplemented by the discussion following the table.

Principal contractual cash obligations at December 26, 2004 were:

	Total	2005	2006	2007	2008	2009	2010 and beyond
				(in thousands)			
4.75% Debentures	\$ 500,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 500,000
4.50% Notes	201,500	—	—	201,500	—	—	—
7.75% Notes	600,000	—	—	—	—	—	600,000
Repurchase Obligations to Fab 36 Partners ⁽¹⁾	121,931	16,242	26,422	26,422	26,422	26,423	—
July 2003 Spansion Term Loan	44,599	27,500	17,099	—	—	—	—
Spansion Japan Term Loan	127,389	46,323	46,323	34,743	—	—	—
Fujitsu Cash Note	40,000	10,000	30,000	—	—	—	—
AMD Penang Term Loan	6,325	1,518	1,518	1,518	1,518	253	—
Spansion China Loan	32,499	32,499	—	—	—	—	—
Capital Lease Obligations	184,853	96,746	83,079	4,816	212	—	—
Operating Leases	430,854	76,865	63,812	51,007	44,547	39,071	155,552
Unconditional Purchase Commitments ⁽²⁾⁽³⁾	1,281,200	281,662	205,951	209,301	183,774	43,074	357,438
Total principal contractual cash obligations	\$ 3,571,150	\$ 589,355	\$ 474,204	\$ 529,307	\$ 256,473	\$ 108,821	\$ 1,612,990

[Table of Contents](#)

- (1) This is the amount of silent partnership contributions received by AMD Fab 36 KG as of December 26, 2004 from the unaffiliated limited partners under the Fab 36 partnership agreements. Assuming certain milestones are met by AMD Fab 36 KG, we expect to receive a total of up to \$189 million of silent partnership contributions. AMD Fab 36 Holding and AMD Fab 36 Admin are required to repurchase each partner's silent partnership contribution in annual installments one year after the partner has contributed the full amount required under the partnership agreements. As of December 26, 2004, Fab 36 Beteiligungs had contributed the full amount required under the partnership agreements, but Leipziger Messe had not contributed the full amount. Therefore, the condition precedent to our repurchase obligations with respect to Leipziger Messe's silent partnership contribution had not been met. See "Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements," below.
- (2) Purchase orders for goods and services that are cancelable upon notice and without significant penalties are not included in the amounts above.
- (3) 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.

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.

As of February 5, 2005, the 4.75% Debentures are redeemable by us for cash at our option at specified prices expressed as a percentage of the outstanding principal amount plus accrued and unpaid interest, 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, or by tender offer 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.

[Table of Contents](#)

4.50% Convertible Senior Notes Due 2007

On November 25, 2002, we issued \$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 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:

Period	Price as a Percentage of Principal Amount
Beginning on December 4, 2005 through November 30, 2006	101.800%
Beginning on December 1, 2006 through November 30, 2007	100.900%
On December 1, 2007	100.000%

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.

Holder 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.

As of December 26, 2004 we had exchanged an aggregate of \$201 million of our 4.50% Notes for 29,391,261 shares of our common stock in a series of transactions. As a result of these transactions, we recognized a charge of approximately \$32 million, which represented the difference between the fair value of the shares issued in the transactions and the fair value of shares issuable pursuant to the original conversion terms of the 4.50% Notes.

We may elect to purchase or otherwise retire the remainder of 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, or by tender offer 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.

7.75% Senior Notes Due 2012

On October 29, 2004, we issued \$600 million of 7.75% Senior Notes due 2012 (the 7.75% Notes) in a private offering pursuant to Rule 144A and Regulation S under the Securities Act of 1933, as amended. We used the net proceeds from the sale of the 7.75% Notes plus existing cash to prepay the full amount outstanding under the Dresden Term Loan, including accrued and unpaid interest and a prepayment premium. See "Repayment of Dresden Term Loan," below. The 7.75% Notes mature on November 1, 2012. Interest on the 7.75% Notes is payable semiannually in arrears on May 1 and November 1, beginning May 1, 2005. Prior to November 1, 2008, we may redeem some or all of the 7.75% Notes at a price equal to 100% of the principal amount plus accrued and

[Table of Contents](#)

unpaid interest plus a “make-whole” premium, as defined in the agreement. Thereafter, we may redeem the 7.75% Notes for cash at the following specified prices plus accrued and unpaid interest:

<u>Period</u>	<u>Price as Percentage of Principal Amount</u>
Beginning on November 1, 2008 through October 31, 2009	103.875%
Beginning on November 1, 2009 through October 31, 2010	101.938%
Beginning on November 1, 2010 through October 31, 2011	100.000%
On November 1, 2011	100.000%

In addition, on or prior to November 1, 2007, we may redeem up to 35 percent of the 7.75% Notes with the proceeds of certain sales of our equity securities at 107.75 percent of the principal amount thereof, plus accrued and unpaid interest.

Holders have the right to require us to repurchase all or a portion of our 7.75% Notes in the event that we undergo a change of control, as defined in the indenture governing the 7.75% Notes at a repurchase price of 101% of the principal amount plus accrued and unpaid interest.

The indenture governing the 7.75% Notes contains certain covenants that limit, among other things, our ability and the ability of our restricted subsidiaries, which include all of our subsidiaries except Spansion and its subsidiaries, from:

- incurring additional indebtedness;
- paying dividends and making other restricted payments;
- making certain investments, including investments in our unrestricted subsidiaries;
- creating or permitting certain liens;
- creating or permitting restrictions on the ability of the restricted subsidiaries to pay dividends or make other distributions to us;
- using the proceeds from sales of assets;
- entering into certain types of transactions with affiliates; and
- consolidating or merging or selling our assets as an entirety or substantially as an entirety.

We also entered into a registration rights agreement with the initial purchasers of the 7.75% Notes, which granted the holders certain exchange and registration rights with respect to the 7.75% Notes. We agreed to:

- file a registration statement within 90 days after October 29, 2004 enabling holders to exchange 7.75% Notes for publicly registered notes with substantially identical terms;
- use commercially reasonable efforts to cause the registration statement to become effective within 180 days after October 29, 2004;
- use commercially reasonable efforts to effect an exchange offer of the 7.75% Notes for registered notes within 225 days after October 29, 2004; and
- file a shelf registration statement for the resale of the 7.75% Notes if we cannot effect the exchange offer within the time periods listed above.

If we do not meet these deadlines, additional interest of 0.25% per instance will be paid on the 7.75% Notes until the obligations under the registration rights agreement are fulfilled. On January 20, 2005 we filed a registration statement on Form S-4 in order to enable holders to exchange the outstanding 7.75% Notes for publicly registered notes with substantially identical terms.

Table of Contents

Issuance costs incurred in connection with this transaction in the amount of approximately \$13 million will be amortized ratably over the term of the 7.75% Notes as interest expense, approximating the effective interest method.

Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements

We are facilitating our new 300-millimeter wafer fabrication facility, Fab 36, in Dresden, Germany, which is located adjacent to Fab 30. Fab 36 is owned by a German limited partnership named AMD Fab 36 Limited Liability Company & Co. KG, or AMD Fab 36 KG. 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. Accordingly, AMD Fab 36 KG is our indirect consolidated subsidiary. 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. Leipziger Messe and Fab 36 Beteiligungs are limited partners in AMD Fab 36 KG. We also anticipate receiving up to approximately \$735 million in grants and allowances from federal and state German authorities for the Fab 36 project. We expect that capital expenditures for Fab 36 through 2007 will be approximately \$2.5 billion in the aggregate.

The funding to construct and facilitate Fab 36 consists of:

- Equity contributions from us of \$792 million under the partnership agreements, revolving loans from us of up to approximately \$1.0 billion, and guarantees from us for amounts owed by AMD Fab 36 KG and its affiliates to the lenders and unaffiliated limited partners;
- investments of up to approximately \$433 million from Leipziger Messe and Fab 36 Beteiligungs;
- loans of up to approximately \$947 million from a consortium of banks;
- up to approximately \$735 million of subsidies consisting of grants and allowances, from the Federal Republic of Germany and the State of Saxony; and
- a loan guarantee from the Federal Republic of Germany and the State of Saxony of 80 percent of the losses sustained by the lenders referenced above after foreclosure on all other security.

As of December 26, 2004, we had contributed \$248 million of equity in AMD Fab 36 KG and no loans were outstanding. These amounts have been eliminated in our consolidated financial statements.

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 limited partner and silent partner contributions in AMD Fab 36 KG. The partnership has been 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 following the year during which the notice is given. However, other than for good cause, a partner's termination will not be effective before December 31, 2015.

Also 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 operate Fab 36. The consortium of banks agreed to make available up to \$947 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'

[Table of Contents](#)

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 \$1.4 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 borrowed under the Fab 36 Loan Agreements are repayable in quarterly installments commencing in September 2007 and terminating in March 2011.

AMD Fab 36 KG pledged substantially all of its current and future assets as security under the Fab 36 Loan Agreements, we pledged our equity interest in AMD Fab 36 Holding and AMD Fab 36 LLC, AMD Fab 36 Holding pledged its equity interest in AMD Fab 36 Admin and its partnership interest in AMD Fab 36 KG and AMD Fab 36 Admin and AMD Fab 36 LLC pledged all of their partnership interests in AMD Fab 36 KG. We guaranteed the obligations of AMD Fab 36 KG to the lenders under the Fab 36 Loan Agreements. We also guaranteed 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 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 (in thousands)	if Moody's Rating is at least		if Standard & Poor's Rating is at least
\$500,000	B1 or lower	and	B+ or lower
425,000	Ba3	and	BB-
400,000	Ba2	and	BB
350,000	Ba1	and	BB+
300,000	Baa3 or better	and	BBB-or better

As of December 26, 2004, group consolidated cash was greater than \$500 million, and therefore, the preceding financial covenants were not applicable.

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 \$792 million, Leipziger Messe agreed to provide an aggregate of \$271 million and Fab 36 Beteiligungs agreed to provide an aggregate of \$162 million. The capital contributions of Leipziger Messe and Fab 36 Beteiligungs are comprised of limited partnership contributions and silent partnership contributions. These 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 limited partners will receive a guaranteed rate of return of between 11 percent and 13 percent per annum on 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 interests held by Leipziger Messe and Fab 36 Beteiligungs, 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

Table of Contents

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 \$4.7 million to Leipziger Messe and a premium of \$2.8 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 interest of Leipziger Messe's and Fab 36 Beteiligungs' contributions over time. Specifically, AMD Fab 36 Holding and AMD Fab 36 Admin are required to repurchase Leipziger Messe's silent partnership interest of \$108 million in annual 25 percent installments commencing one year after Leipziger Messe has completed its limited partnership and silent partnership contributions, and Fab 36 Beteiligungs' silent partnership interest of \$81 million in annual 20 percent installments commencing in October 2005.

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

The limited partnership contributions that AMD Fab 36 KG expects to receive from Leipziger Messe and Fab 36 Beteiligungs 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 initially record these contributions as minority interest, based on their fair value. Each accounting period, we increase the carrying value of this minority interest toward our ultimate redemption value of these contributions by the guaranteed rate of return of between 11 percent and 13 percent. We classify this periodic accretion of redemption value as an additional minority interest allocation. No separate accounting is required for the put and call options because they are not freestanding instruments and not considered derivatives under SFAS 133, Accounting for Derivative Instruments and Hedging Activities.

As of December 26, 2004, AMD Fab 36 KG received \$122 million of silent partnership contributions and \$128 million of limited partnership contributions from the unaffiliated limited partners. These contributions were recorded as debt and minority interest, respectively, in the accompanying consolidated balance sheet.

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 in the form of:

- a loan guarantee equal to 80 percent of the losses sustained by the lenders after foreclosure on all other security; and
- subsidies consisting of grants and allowances totaling up to approximately \$735 million.

As of December 26, 2004, AMD Fab 36 KG received cash allowances of \$5 million for investments made in 2003 and cash grants of \$25 million for investments made in 2003 and 2004.

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 loans are repaid in full.

Table of Contents

Under the Fab 36 Loan Agreements, AMD Fab 36 KG, AMD Fab 36 Holding and AMD Fab 36 Admin are generally prevented from paying dividends or making other payments to us. In addition, 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:

- 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;
- failure to pay any amount due under the Fab 36 Loan Agreements within five days of the due date;
- 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;
- 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.

In general, any default with respect to other indebtedness of AMD or AMD Fab 36 KG 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 could result in a cross-default under our loan agreements, including the indentures governing our 4.75% Debentures, 4.50% Notes and 7.75% Notes. We cannot assure you 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.

Generally, the amounts under the Fab 36 Loan Agreements and the partnership agreements are denominated in euros. However, we report these amounts in U.S. dollars, which are subject to change based on applicable exchange rates. We used the exchange rate at December 26, 2004, of 0.739 euro to one U.S. dollar, to translate the amounts denominated in euros into U.S. dollars. However, with respect to amounts of limited partnership and other equity contributions, investment grants, allowances and subsidies received by AMD Fab 36 KG through December 26, 2004, we used the historical exchange rates that were in effect at the time AMD Fab 36 KG received these amounts to convert amounts denominated in euros into U.S. dollars.

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 5.98 percent at December 26, 2004. Repayment occurs in equal, consecutive, quarterly principal and interest installments ending in September 2006. As of December 26, 2004, \$45 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 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.

Table of Contents

Pursuant to the terms of the July 2003 Spansion Term Loan, Spansion is required to comply with the following financial covenants during an enhanced covenant period, which occurs if either Spansion's net domestic cash balance (as defined in the July 2003 Spansion Term Loan) as of the last day of any fiscal quarter is below \$60 million or if its net worldwide cash balance (as defined in the July 2003 Spansion Term Loan) as of the last day of any fiscal quarter is below \$130 million:

- 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> <u>(in millions)</u>
For the four quarters ending December 2004	\$ 550
For the four quarters ending in 2005	\$ 640
For the four quarters ending in 2006	\$ 800

- 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 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

In addition, during an enhanced covenant period, Spansion is restricted in its ability to pay cash dividends to us or Fujitsu.

As of December 26, 2004, Spansion's net domestic cash balance was \$119 million and its net worldwide cash balance was \$196 million. Because Spansion was not in an enhanced covenant period, the preceding financial covenants were not applicable.

Spansion Japan Term Loan and Guarantee

As a result of the formation of Spansion, 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 0.98 percent as of December 26, 2004. Repayment occurs in equal, consecutive, quarterly principal installments ending in June 2007. As of December 26, 2004, \$127 million was outstanding under this term loan agreement. Spansion Japan's assets are pledged as security for its borrowings under this agreement. Also, Fujitsu 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. Pursuant to the terms of the Spansion Japan Term Loan, 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 (approximately \$579 million based on the exchange rate as of December 26, 2004);

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>
Fiscal year 2004	(in millions) \$ 221
Fiscal year 2005	\$ 204
Fiscal year 2006	\$ 188

- 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>
Third and fourth fiscal quarters of 2004	120%
Fiscal year 2005	120%
Fiscal year 2006	120%

As of December 26, 2004, Spansion Japan was in compliance with these financial covenants.

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 December 26, 2004 of 103.62 yen to one U.S. dollar to translate the amounts denominated in yen into U.S. dollars.

Fujitsu Cash Note

As a result of the Spansion transaction, Fujitsu loaned \$40 million to Spansion pursuant to a promissory note. The note bears an interest rate of LIBOR plus four percent, which was 5.98 percent as of December 26, 2004, and has a term of three years. The interest rate cannot exceed seven percent. The note is repayable in four equal payments on September 30, 2005, December 31, 2005, March 31, 2006 and June 30, 2006. Interest is payable quarterly.

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 December 26, 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 December 26, 2004 was approximately \$6 million.

Spansion China Loan

During the second quarter of 2004, Spansion (China) Limited, a subsidiary of Spansion, 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 December 26, 2004). The interest rate on the U.S. 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 December 26, 2004, Spansion China had fully drawn on the loans.

[Table of Contents](#)

Capital Lease Obligations

As of December 26, 2004, we had aggregate outstanding capital lease obligations of approximately \$185 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 \$87 million of Spansion's and its subsidiaries' aggregate outstanding capital lease obligations as of December 26, 2004.

Operating Leases

We lease certain of our facilities, including our executive offices in Sunnyvale, California, and in some jurisdictions we lease the land on which these facilities are built, under lease agreements that expire at various dates through 2032. We lease certain of our manufacturing and office equipment for terms ranging from one to five years. Total future lease obligations as of December 26, 2004, were approximately \$431 million, of which \$106 million was recorded as a liability for certain facilities that were included in our 2002 Restructuring Plan.

Unconditional Purchase Commitments

Total non-cancelable purchase commitments as of December 26, 2004, were approximately \$1.3 billion for periods through 2020. These purchase commitments include approximately \$546 million related to contractual obligations to purchase energy and gas for Fab 30 and Fab 36 and \$250 million representing future payments to IBM pursuant to the joint development agreement. As IBM's services are being performed ratably over the life of the agreement, we expense the payments as incurred. Our non-cancelable purchase commitments also include approximately \$141 million to M+W Zander for the design and construction of Fab 36 and other related services. These payments will be made to M+W Zander as services are performed. In addition, unconditional purchase commitments also include approximately \$68 million for software maintenance agreements that require periodic payments through 2009. As a result, we have not recorded any liabilities relating to these agreements. The remaining commitments primarily consist of non-cancelable contractual obligations to purchase raw materials, natural resources and office supplies. Purchase orders for goods and services that are cancelable without significant penalties are not included in the amount set forth in the table above.

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 \$87 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 do not require us to make cash payments and primarily consist of approximately \$274 million of deferred grants and subsidies related to the Fab 30 and Fab 36 projects and a \$22 million deferred gain as a result of the sale and leaseback of our corporate marketing, general and administrative facility in Sunnyvale, California in 1998.

Repayment of Dresden Term Loan

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 provided financing for the Fab 30 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 December 26, 2004, we had invested approximately \$2.4 billion in the Fab 30 project.

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. On November 2, 2004, AMD Saxony prepaid the full amount outstanding under the Dresden Term Loan plus accrued and unpaid interest and a prepayment premium, and the Dresden Term Loan

[Table of Contents](#)

and related security agreements were terminated effective December 23, 2004. We recognized a charge of approximately \$14 million (included in interest income and other, net) associated with the Dresden Term Loan, which included the prepayment premium of approximately \$8.5 million and write-off of remaining capitalized financing costs of approximately \$5.3 million.

Also in March 1997, AMD Saxony entered into a Subsidy Agreement with the Federal Republic of Germany and the State of Saxony in support of the Fab 30 project. Under this agreement, the Federal Republic of Germany and the State of Saxony agreed to provide:

- guarantees equal to 65 percent of the amount outstanding under the Dresden Term Loan, which was zero as of December 26, 2004;
- capital investment grants and allowances totaling up to approximately \$493 million as of December 26, 2004; and
- interest subsidies totaling \$208 million as of December 26, 2004.

Of these amounts, AMD Saxony received approximately \$411 million in capital investment grants and allowances and \$153 million in interest subsidies through December 26, 2004. AMD Saxony also received \$58 million in research and development subsidies through December 26, 2004. Amounts received under the Subsidy Agreement are recorded as a long-term liability on our financial statements and are amortized to operations ratably over the contractual life of the Subsidy Agreement as a reduction to operating expenses. As of December 26, 2004, these amounts were being amortized ratably through December 2007. AMD Saxony has received substantially all investment grants and allowances and interest subsidies to which it is entitled. 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.

Under the original Subsidy Agreement, AMD Saxony undertook to attain a certain employee headcount by December 2003 and to maintain such headcount until December 2008. 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 December 2002, AMD Saxony reduced its anticipated employment levels as a result of the 2002 Restructuring Plan. Consequently, as of December 26, 2004, 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. Although the maximum amount of capital investment grants and allowances available under the Subsidy Agreement was reduced from \$563 million to approximately \$493 million, this reduction did not result in a repayment of capital investment grants and allowances already received. We adjusted the quarterly amortization of these amounts accordingly.

Sachsische Aufbaubank GmbH, (the SAB) an entity acting on behalf of the Free State of Saxony, requested that AMD Saxony exchange investment grants that it had previously received in the amount of approximately \$101 million for an equivalent amount of investment allowances. AMD Saxony has agreed to repay these investment grants in 2005. AMD Saxony will receive the corresponding amount of investment allowances from the German tax authorities. There is no right of setoff between these two amounts because investment grants are co-financed by the State of Saxony and the Federal Republic of Germany whereas investment allowances are financed only by the Federal Republic of Germany. Accordingly, as of December 26, 2004, we recorded a receivable for the investment allowances and a payable in a corresponding amount for the investment grants. The receivable and payable are included in prepaid expenses and other current assets and accrued liabilities on the consolidated balance sheets. We believe that the exchange will not have an impact on our operating results and cash flows.

[Table of Contents](#)

Guarantees

Guarantees of Indebtedness Recorded on Our Consolidated Balance Sheet

The following table summarizes the principal guarantees issued as of December 26, 2004 related to underlying liabilities that are already recorded on our consolidated balance sheet as of December 26, 2004 and their expected expiration dates by year. No incremental liabilities are recorded on our consolidated balance sheet for these guarantees. For more information on these guarantees, see “Contractual Cash Obligations and Guarantees,” above.

	Amounts Guaranteed ⁽¹⁾	2005	2006	2007 (in thousands)	2008	2009	2010 and Beyond
July 2003 Spansion term loan guarantee	\$ 26,759	\$ 16,500	\$ 10,259	—	—	—	—
Spansion Japan term loan guarantee	\$ 76,433	\$ 27,794	\$ 27,794	\$ 20,845	—	—	—
Spansion capital lease guarantees	\$ 87,303	\$ 49,557	\$ 34,475	\$ 3,271	—	—	—
Repurchase Obligations to Fab 36 partners ⁽²⁾	\$ 121,931	\$ 16,242	\$ 26,422	\$ 26,422	\$ 26,422	\$ 26,423	—
Total guarantees	\$ 312,426	\$ 110,093	\$ 98,950	\$ 50,538	\$ 26,422	\$ 26,423	—

⁽¹⁾ Amounts represent the principal amount of the underlying obligations guaranteed and are exclusive of obligations for interest, fees and expenses.

⁽²⁾ This is the amount of silent partnership contributions received by AMD Fab 36 KG, as of December 26, 2004 from the unaffiliated limited partners under the Fab 36 partnership agreements. Assuming certain milestones are met by AMD Fab 36 KG, we expect to receive a total of up to \$189 million of silent partnership contributions. AMD Fab 36 Holding and AMD Fab 36 Admin are required to repurchase each partner’s silent partnership contribution in annual installments one year after the partner has contributed the full amount required under the partnership agreements. We guaranteed these obligations. As of December 26, 2004, Fab 36 Beteiligungs had contributed the full amount required under the partnership agreements, but Leipziger Messe had not contributed the full amount. Therefore, the condition precedent to our repurchase obligations with respect to Leipziger Messe’s silent partnership contribution had not been met. See “Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements,” above.

Guarantees of Indebtedness not Recorded on Our Consolidated Balance Sheet

The following table summarizes the principal guarantees issued as of December 26, 2004 for which the related underlying liabilities are not recorded on our consolidated balance sheet as of December 26, 2004 and their expected expiration dates:

	Amounts Guaranteed ⁽¹⁾	2005	2006	2007 (in thousands)	2008	2009	2010 and Beyond
Spansion operating lease guarantees	\$ 24,414	\$ 13,267	\$ 8,069	\$ 2,052	\$ 1,026	—	—
AMTC revolving loan guarantee	\$ 43,308	—	—	\$ 43,308	—	—	—
AMTC rental guarantee ⁽²⁾	\$ 153,489	—	—	—	—	—	\$ 153,489
Other	\$ 5,629	\$ 1,813	\$ 3,816	—	—	—	—
Total guarantees	\$ 226,840	\$ 15,080	\$ 11,885	\$ 45,360	\$ 1,026	—	\$ 153,489

⁽¹⁾ Amounts represent the principal amount of the underlying obligations guaranteed and are exclusive of obligations for interest, fees and expenses.

⁽²⁾ Amount of the guarantee diminishes as the rent is paid.

[Table of Contents](#)

Spansion Operating Lease Guarantees

We guaranteed certain operating leases entered into by Spansion and its subsidiaries totaling approximately \$24 million as of December 26, 2004. The amounts guaranteed are reduced by the lease payments paid by Spansion over the lease term. Under the provision of FIN 45, we have not recorded any liability in our consolidated financial statements associated with these guarantees because they are for our subsidiary's performance obligations.

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 an advanced photomask facility in Dresden, Germany. The results of operations of AMTC, which we account for following the equity method of accounting, are immaterial to our consolidated financial statements. To finance the project, BAC and AMTC entered into a \$162 million revolving credit facility and a \$102 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 December 26, 2004, we guaranteed up to approximately \$43 million plus interest and expenses under the revolving loan, and up to approximately \$20 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 \$153 million. As of December 26, 2004, \$80 million was drawn under the revolving credit facility, and \$78 million was drawn under the term loan. We have not recorded any liability in our consolidated financial statements associated with these guarantees because they were issued prior to December 31, 2002, the effective date of FIN 45.

Other Financial Matters

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

Sale Leaseback Transaction

In January 2005, Spansion Japan entered into a sale and leaseback transaction for certain semiconductor manufacturing equipment in the amount of approximately 8.2 billion yen (approximately \$79 million based on the exchange rate as of December 26, 2004). As the sales proceeds slightly exceed the net book value of the equipment, there is a minimal deferred gain to be recognized on the sale. Under the agreement, the lease payments will be made in six equal semi-annual payments and the lease will terminate on December 31, 2007. At the expiration of the lease term, Spansion Japan has the option to purchase the equipment at an agreed upon price, which we believe to be a bargain purchase option. In addition, Spansion Japan can renew the lease if the lessor and Spansion Japan both agree upon the renewal terms not later than six months prior to the expiration of the lease term. During the term of the lease, Spansion Japan is required to comply with certain financial covenants.

[Table of Contents](#)

Outlook

During the first quarter of 2005, for our Computation Products segment, we expect net sales to decline slightly compared to the fourth quarter of 2004. For our Memory Products segment, we expect net sales to decline during the first quarter of 2005 compared to the fourth quarter of 2004 due to continued imbalance in supply and demand, continued pressure on average selling prices and seasonality.

In fiscal 2005, we expect capital expenditures of approximately \$1.5 billion. We expect depreciation and amortization expense to be approximately \$1.2 billion, and research and development expenses, both in total dollars and as a percentage of sales, to increase primarily due to Fab 36 start-up costs of approximately \$200 million. We also expect total marketing, general and administrative expenses to increase in 2005, but to decline as a percentage of sales.

In 2005, our strategy is to expand our position in the enterprise segment with our AMD64-based processors; to leverage our Spansion product portfolio to expand our position in the Flash memory market, and to increase the adoption of our MirrorBit technology. However, economic and industry conditions remain uncertain and continue to make it particularly difficult to forecast product demand. If economic conditions do not continue to improve in the near term in accordance with our expectations, or if the semiconductor industry experiences a significant downturn, our revenues and profitability will be adversely affected.

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, (the Prior Plans), including those that were not approved by our stockholders, were consolidated into the 2004 Plan. As of April 29, 2004, equity awards are made only from the 2004 Plan. Under our Prior Plans key employees generally were, and under the 2004 Plan key employees generally are, granted 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. Any incentive stock options (ISOs) granted under the Prior Plans or the 2004 Plan 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. Under the 2004 Plan, we have also granted awards of restricted stock. The purchase price for an award of restricted stock is \$0.01 per share. Restricted stock can be granted to any employee or consultant. Restricted stock that vests based on continued service does not fully vest for three years from the date of grant. Restricted stock that vests based on performance does not vest for at least one year from the date of grant.

Table of Contents

Section II. General Option Information

The following is a summary of stock option activity for the years ended December 26, 2004 and December 28, 2003:

	Year-ended December 26, 2004		Year-ended December 28, 2003	
	Number of Shares	Weighted- Average Exercise Price	Number of Shares	Weighted- Average Exercise Price
	(in thousands except share price)			
Options:				
Outstanding at beginning of year	40,969	\$ 12.92	60,408	\$ 18.58
Granted	26,121	\$ 14.54	5,575	\$ 9.46
Canceled	(3,425)	\$ 23.20	(22,642)	\$ 27.69
Exercised	(9,981)	\$ 10.08	(2,372)	\$ 7.86
Outstanding at end of year	53,684	\$ 13.58	40,969	\$ 12.92
Exercisable at end of year	32,250	\$ 13.72	28,624	\$ 13.66
Available for grant at beginning of year	29,613		13,019	
Available for grant at end of year	23,901		29,613	

In-the-money and out-of-the-money stock option information as of December 26, 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 thousands except share price)					
In-the-Money	29,071	\$ 11.84	21,079	N/A ⁽³⁾	50,150	\$ 12.40
Out-of-the-Money ⁽¹⁾	3,179	\$ 30.86	355	N/A ⁽³⁾	3,534	\$ 30.23
Total Options Outstanding	32,250	\$ 13.72	21,434		53,684 ⁽²⁾	\$ 13.58

⁽¹⁾ Out-of-the-money stock options have an exercise price equal to or above \$22.12, the closing price of AMD's common stock, on the last trading day of our fiscal year, December 23, 2004.

⁽²⁾ Includes 232,088 shares outstanding from treasury stock as non-plan grants.

⁽³⁾ Weighted average exercise price information is not available.

Section III. Distribution and Dilutive Effect of Options

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

	2004	2003	2002
Net grants ⁽¹⁾ during the period as % of outstanding shares ⁽²⁾	5.79%	-4.87%	2.44%
Grants to listed officers ⁽³⁾ during the period as % of total options granted	3.59%	11.77%	14.33%
Grants to listed officers during the period as % of outstanding shares	0.24%	0.19%	0.49%
Cumulative options and awards held by listed officers as % of total options and awards outstanding	11.94%	22.90%	17.93%

⁽¹⁾ Options grants are net of options canceled.

⁽²⁾ Shares outstanding are as of December 26, 2004, December 28, 2003 and December 29, 2002.

⁽³⁾ The "listed officers" are those executive officers listed in the summary compensation table in our proxy statements for our annual meeting of stockholders to be held on April 28, 2005, and the annual meetings of stockholders held in 2004 and 2003.

[Table of Contents](#)

On June 27, 2003, we filed a Tender Offer Statement with the SEC and made an offer, which was approved by our stockholders, to exchange certain stock options to purchase shares of our common stock, outstanding under eligible option plans and held by eligible employees, for replacement options to be granted no sooner than six months and one day from the cancellation of the surrendered options. The offer to exchange expired on July 25, 2003. Options to purchase approximately 19 million shares of our common stock were tendered for exchange and cancelled on July 28, 2003. On January 30, 2004, we granted options to purchase approximately 12 million shares of our common stock at an exercise price that represented the closing price of our common stock on that date, in exchange for options cancelled. We did not record compensation expense as a result of the exchange.

Recently Issued Accounting Pronouncements

In December 2004, the Financial Accounting Standard Board (FASB) issued a revision to Statement of Financial Accounting Standard No. 123, "Accounting for Stock-Based Compensation" (SFAS 123R). SFAS 123R eliminates our ability to use the intrinsic value method of accounting under APB Opinion 25, "Accounting for Stock Issued to Employees," and generally requires a public entity to reflect on its income statement, instead of pro forma disclosures in its financial footnotes, the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award. The grant-date fair value will be estimated using option-pricing models adjusted for the unique characteristics of those equity instruments. Among other things, SFAS 123R also requires entities to estimate the number of instruments for which the requisite service is expected to be rendered and, if the terms or conditions of an equity award are modified after the grant date, to recognize incremental compensation cost for such a modification by comparing the fair value of the modified award with the fair value of the award immediately before the modification. In addition, SFAS 123R amends FASB Statement No. 95, "Statement of Cash Flows," to require that excess tax benefits be reported as a financing cash inflow rather than as a reduction of taxes paid. SFAS 123R is effective generally for public companies as of the beginning of the first interim or annual reporting period that begins after June 15, 2005. SFAS 123R applies to all awards granted after the required effective date and to awards modified, repurchased, or cancelled after that date. As of the required effective date, all public entities that used the fair-value-based method for either recognition or disclosure under the original Statement 123 will apply this revised statement using a modified version of prospective application. Under that transition method, compensation cost is recognized on or after the required effective date for the portion of outstanding awards for which the requisite service has not yet been rendered, based on the grant-date fair value of those awards calculated under the original Statement 123 for either recognition or pro forma disclosures. For periods before the required effective date, those entities may elect to apply a modified version of retrospective application under which financial statements for prior periods are adjusted on a basis consistent with the pro forma disclosures required for those periods by the original Statement 123. We are currently evaluating the requirements of SFAS 123R and will adopt this statement at the effective date. Although we cannot estimate the exact amount at this time, we expect that the adoption of this statement will have a material effect on our financial statements.

RISK FACTORS

If we cannot generate sufficient operating cash flow or obtain external financing, we may be unable to make all of our planned capital expenditures or fulfill our obligations to Fab 36 or Spansion.

Our ability to fund capital expenditures in accordance with our business plan depends on generating sufficient cash flow from operations and the availability of external financing. In 2005, we plan to make approximately \$1.5 billion in capital expenditures.

Moreover, under the partnership agreement for AMD Fab 36 KG, our German subsidiaries, AMD Fab 36 Holding and AMD Fab 36 Admin are obligated to invest approximately \$792 million into AMD Fab 36 KG. In addition, under the revolving credit agreement among AMD, AMD Fab 36 Holding and AMD Fab 36 KG, we or AMD Fab 36 Holding are required to provide up to approximately \$1.0 billion to AMD Fab 36 KG. Loans provided to AMD Fab 36 KG under this revolving credit agreement are unsecured and subordinated to the rights of the consortium of banks that will also be providing financing to AMD Fab 36 KG.

We are also obligated through June 30, 2007 to provide Spansion with additional funding to finance operational cash flow needs. Generally, Spansion must seek any required financing from external sources. However, if third-party financing is not available, either on a non-recourse basis to us or with guarantees based on our pro rata ownership interest, we must provide funding to Spansion equal to our pro rata ownership interest in Spansion, which is currently 60 percent. An inability to meet our funding obligations for Spansion could, among other things, result in additional equity in Spansion being issued to Fujitsu or third parties, which would reduce our ownership in and control over Spansion.

Our capital expenditures, together with ongoing operating expenses, will be a substantial drain on our cash flow and may 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 market competition. 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 curtail capital expenditures or abandon projects, we could be materially adversely affected. For example, if we abandon the Fab 36 project, we will have to write off related costs that we capitalized and we will 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.

We have a substantial amount of indebtedness that could adversely affect our financial position.

As of December 26, 2004, we had consolidated debt of approximately \$1.9 billion. In addition, we guaranteed approximately \$227 million of obligations, which are not reflected on our balance sheet. Our substantial indebtedness may:

- make it difficult for us to satisfy our financial obligations, including making scheduled principal and interest payments;
- limit our ability to borrow additional funds for working capital, capital expenditures, acquisitions and general corporate and other purposes;
- 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 us to use 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;

Table of Contents

- 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.

We and our subsidiaries may be able to incur substantially more debt, including secured debt, in the future.

Subject to the restrictions in the agreements governing our existing indebtedness, we and our subsidiaries may incur significant additional debt, including secured debt, in the future. In particular, as of December 26, 2004, we and our subsidiaries would have had the following additional borrowings available:

- Up to \$100 million under our revolving credit facility. Amounts borrowed under this facility are secured by all of our accounts receivable, inventory, general intangibles (excluding intellectual property) and the related proceeds, excluding Spansion's accounts receivable, inventory and general intangibles.
- Spansion Japan had up to 15 billion yen (approximately \$145 million as of December 26, 2004) available under a revolving credit facility.
- AMD Fab 36 KG will have the ability, subject to achieving certain milestones, to borrow up to \$947 million (based on an exchange rate of 0.739 euro to one U.S. dollar as of December 26, 2004) from a consortium of banks under the Fab 36 Loan Agreements during 2006 and 2007.

Although the terms of the agreements governing our existing indebtedness contain restrictions on the incurrence of additional debt, these restrictions are subject to a number of important exceptions, and debt incurred in compliance with these restrictions could be substantial.

We may not be able to generate sufficient cash to service our debt obligations.

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 in amounts sufficient to enable us to service our debt, or to 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.

Our debt instruments impose restrictions on us that may adversely affect our ability to operate our business.

The indentures governing our 4.50% Notes, 4.75% Debentures and 7.75% Notes contain various covenants that limit our ability to:

- incur additional indebtedness;
- pay dividends and make other restricted payments;
- make certain investments, including investments in our unrestricted subsidiaries;
- create or permit certain liens;
- create or permit restrictions on the ability of certain restricted subsidiaries to pay dividends or make other distributions to us;
- use the proceeds from sales of assets;
- enter into certain types of transactions with affiliates; and

Table of Contents

- consolidate or merge or sell our assets as an entirety or substantially as an entirety.

In addition:

- The guarantees associated with the Fab 36 Loan Agreements contain restrictive covenants, including a prohibition on the ability of AMD Fab 36 KG and its affiliated limited partners to pay us dividends and other payments, and also require us to maintain specified financial ratios when group consolidated cash is below specified amounts.
- Our revolving credit facility contains restrictive covenants, including a prohibition on our ability to pay dividends, and also requires us to maintain specified financial ratios and satisfy other financial condition tests when our net domestic cash is below specified amounts.
- The July 2003 Spansion Term Loan, as amended, contains restrictive covenants, including a prohibition on Spansion's ability to pay dividends and also requires Spansion to maintain specified 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 the applicable agreement.

In addition, our 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 with respect to any indebtedness that results in acceleration of the maturity date or any failure to repay debt when due in an amount in excess of \$50 million would cause a cross default under the indenture governing our 7.75% Notes. Similarly, a default with respect to any indebtedness in excess of \$25 million would cause a cross-default under the indentures governing our 4.75% Debentures and 4.50% Notes. 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 any 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 revolving credit facility, and in certain property, plant and equipment under the July 2003 Spansion Term Loan Agreement. If the lenders under any of the credit facilities or the note holders or the trustee under the indentures governing our 4.75% Debentures, 4.50% Notes and 7.75% Notes accelerate the repayment of borrowings, we cannot assure you that we will have sufficient assets to repay those borrowings and our other indebtedness.

If we 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 sell our microprocessors could be materially adversely affected.

Our ability to innovate beyond the x86 instruction set controlled by Intel depends partially on Microsoft 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 the timely introduction of an operating system that works with our AMD64 technology, 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 microprocessors 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 extensions to the standard x86 instruction set. Microsoft estimated that the release of this software will occur in the first half of 2005. Previously, Microsoft

[Table of Contents](#)

estimated the release date for this software would 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 64-based processors.

We must achieve further market acceptance of our 64-bit technology, AMD64, or we will be materially adversely affected.

We designed our AMD64-based 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. Market acceptance of these processors is subject to risks and uncertainties including:

- the support of operating system and application program providers for our 64-bit instruction set, including timely development of 64-bit applications;
- 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;
- our ability to produce these processors in a timely manner on advanced process technologies, in the volume and with the performance and feature set required by customers; and
- the availability, performance and feature set of motherboards, memory and chipsets designed for these processors.

If we are unable to achieve further market acceptance of our AMD64 technology, we will be materially adversely affected.

We cannot be certain that our substantial investments in 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. We cannot be certain that we will be able to develop, or obtain or successfully implement leading-edge process technologies needed to manufacture 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.

For example, we have a joint development agreement with IBM, pursuant to which we work together to develop new process technologies. In September 2004, we amended this agreement and extended its termination date from December 2005 to December 2008. Under this amended agreement, we anticipate that from December 26, 2004 through December 2008, we would pay fees to IBM of between approximately \$220 million and \$250 million in connection with joint development projects. In addition, from the beginning of 2002 through December 26, 2004, we paid approximately \$247 million to IBM in connection with agreements and services related to license grants and research and development activities.

If this agreement were to be terminated, we would either have to resume research and development activities for microprocessors internally or find an alternative partner. In either case, our research and development costs could increase, and we could experience delays or other setbacks in the development of new process technologies, any of which could materially adversely affect us. Moreover, the successful and timely development and implementation of silicon-on-insulator technology and the achievement of other milestones set forth in the joint development agreement are critical to our AMD64-based processors and to our ability to commence operations at Fab 36 in accordance with our planned schedule.

[Table of Contents](#)

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 semiconductor industry is highly cyclical and 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 in recent downturns, due to:

- the cyclical nature of 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.

For example, in 2001 and 2002, we implemented restructuring plans due to weak customer demand associated with the downturn in the semiconductor industry. Similarly, in the fourth quarter of 2004, the downturn in the Flash memory market contributed to a decline in our Memory Product net sales. If these conditions in the semiconductor industry occur, we could be materially adversely affected.

Fluctuations in demand for PCs and mobile telephones and other consumer electronics may adversely affect sales of our products.

The Computation Products segment of our business is dependent upon the market for computers, including PCs. 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 computers is below 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.

The Memory Products segment of our business is dependent to a large degree upon demand for mobile telephones as well as consumer electronics, automotive electronics and other embedded applications. If demand for these devices is below our expectations or if the manufacturers of successive generations of these devices do not require NOR-based Flash memory products or increasing Flash memory content, we could be materially adversely affected.

Intense competition in the microprocessor and Flash memory markets could materially adversely affect us.

The IC industry is intensely competitive. With respect to our microprocessor products, our competitor is Intel. Microprocessor 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, and successive generations of products are developed and introduced for sale. We may not be able to compete effectively if we fail to reduce our costs on existing products or fail to develop and introduce, on a cost-effective and timely basis, new products or enhanced versions of existing products with higher margins.

Our principal competitors in the Flash memory market are Intel, Samsung, Toshiba, STMicroelectronics N.V., Sharp Electronics Corporation, Silicon Storage Technology and Macronix International. The Flash memory market is characterized by migration to higher density and lower cost devices and a competitive pricing

[Table of Contents](#)

environment. In addition, ample capacity for manufacturing Flash memory products exists due to recent capital investment by some of our competitors, which is likely to further contribute to a competitive pricing environment. In the past, including the second half of 2004, the net increases of supply, meaning the difference of capacity additions less capacity reductions due to obsolescence, exceeded demand requirements leading to oversupply situations and downturns in the industry. In the second half of 2004, fluctuations in the rate at which industry capacity grew relative to the growth rate in demand for Flash memory products, particularly NOR-based products, contributed to a decrease in our average selling prices and hurt our results of operations. If this continues in the future we would be materially adversely affected.

To compete successfully, we must transition to technologies that meet the increasing demand for higher Flash memory content in mobile phones, consumer electronics and automotive applications, among other markets, at competitive prices. We expect competition in the Flash memory market to increase as existing manufacturers introduce new products, new manufacturers enter the market, industry-wide production capacity increases, to the extent potential customers choose NAND-based products over NOR-based products and competitors aggressively price their Flash memory products. In addition, we and certain of our competitors have licensed non-volatile memory technology called NROM technology from a third party. NROM technology allows memory devices to store two bits of data in a memory cell. NROM technology has similar characteristics to our MirrorBit technology, which may allow these competitors to develop Flash memory technology that is competitive with MirrorBit technology.

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 dominant competitor in the server segment of the microprocessor market and a significant competitor in the Flash memory market. Intel's significant financial resources enable 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. As long as Intel remains in this dominant position, we may be materially adversely affected by Intel's:

- 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, memory, chipset and basic input/output system, or BIOS, suppliers; and
- strong brand, and marketing and advertising expenditures in support of the brand.

For example, with respect to the microprocessor market, Intel exerts substantial influence over PC manufacturers and their channels of distribution through the "Intel Inside" brand program and other marketing programs. 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, which includes core logic chipsets, graphics chips, motherboards and other components necessary to assemble a PC system. 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 companies to have delayed access to such standards. In marketing our microprocessors to OEMs, we depend on

Table of Contents

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, Intel has significant leverage over these companies because they support each new generation of Intel's microprocessors.

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 Intel's proprietary bus interface protocol. 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 of motherboards, chipsets and other system components support our microprocessor offerings, particularly AMD64-based microprocessors. A failure of the designers and manufacturers 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 also expect competition from Intel to increase to the extent Intel reduces prices on its microprocessor and/or Flash memory products and introduces new competitive products. For example, in 2004 Intel introduced a 64-bit processor for servers and workstations that runs existing 32-bit software applications. This processor competes with our AMD Opteron microprocessor. In addition, Intel recently announced that it will offer dual-core 64-bit processors for the desktop market in the second quarter of 2005. Moreover, Intel currently manufactures certain of its microprocessor products on 300-millimeter wafers using 90-nanometer process technology, which can result in products that are higher performing, use less power and cost less to manufacture. We are currently completing our transition to 90-nanometer process technology for microprocessor manufacturing, and we expect to transition to 300-millimeter wafers in 2006. To the extent Intel manufactures its microprocessor products on larger wafers and smaller process technologies earlier than we do, we may be more vulnerable to Intel's aggressive pricing strategies for microprocessor products. Intel's dominant 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.

The loss of a significant customer may have a material adverse effect on us.

Collectively, our top five OEM and distributor customers (including Fujitsu) accounted for approximately 50 percent of our total gross revenues in 2004. In addition, our Flash memory product sales growth is dependent to a large extent on demand for high-end mobile telephones and our sales in the wireless market have been concentrated in a limited group of customers. If we were to lose a significant customer, or if one of our top customers downsizes or otherwise contracts its operations, demand for our products could decrease and we would be materially adversely affected.

If we fail to keep pace with new product designs and improvements or if we pursue technologies that do not become commercially accepted, customers may not buy our products and we may be adversely affected.

Our success depends to a significant extent on the development, qualification, implementation and acceptance of new product designs and improvements that provide value to our customers. Our ability to develop and qualify such products and related technologies to meet evolving industry requirements and at prices acceptable to our customers are significant factors in determining our competitiveness in our target markets. If we are delayed in developing or qualifying new technologies, we could be materially adversely affected. For

[Table of Contents](#)

example, during the second half of 2004 we experienced a delay in qualifying a new Spansion Flash memory product for the wireless segment. This delay contributed to lower than anticipated Flash memory product revenues for the quarter ended December 26, 2004. Qualifying this product in accordance with our specifications and our revised schedule is critical to our ability to increase sales of our Memory Products segment.

In addition, we plan to introduce our dual-core microprocessors for servers and workstations in mid-2005, followed by dual-processors for the PC market in the second half of 2005. If we are not able to introduce dual-core processors on a timely basis or if our dual-core processors do not achieve market acceptance, we will be materially adversely affected.

A lack of market acceptance of MirrorBit technology could have a material adverse effect on us.

We believe that market acceptance of MirrorBit technology is a critical factor impacting our ability to increase Flash memory product revenues and market share and decrease the cost of products in our Memory Products segment. 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 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.

Spansion Flash memory products are based on NOR architecture, and a significant market shift to NAND architecture could materially adversely affect us.

Flash memory products are generally based on either NOR architecture or NAND architecture. NAND has historically been the preferred architecture for data storage because of attributes such as high densities and fast write and erase speeds. NOR has been the preferred architecture for code storage because of its fast read performance and superior reliability. To date, our Flash memory products have been based on NOR architecture, and we do not manufacture products based on NAND architecture.

During 2003 and 2004, industry sales of products based on NAND architecture grew at higher rates than sales of NOR-based products. This resulted in NAND vendors gaining a greater share of the overall Flash memory market. As mobile telephones and other consumer-driven applications become more advanced they will require higher density Flash memory to meet increased data storage requirements. Because storage requirements will increase to accommodate data-intensive applications, customers may increasingly choose NAND-based products. 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 revenues and market share.

We intend to address end markets traditionally served by NAND-based products with products based on our ORNAND architecture. We are currently developing these products and if they, or any future products based on our MirrorBit technology and ORNAND architecture, fail to achieve acceptance in markets traditionally served by NAND architecture, or at all, we could be materially adversely affected.

We are required to reach agreement with Fujitsu regarding certain actions of our majority-owned subsidiary, Spansion, and our interests may not be aligned.

We own 60 percent of the equity interest in Spansion while Fujitsu owns the remaining 40 percent. Although we are entitled to appoint a majority of the board of managers, which generally manages the affairs of Spansion, certain actions by Spansion require Fujitsu's consent for as long as Fujitsu maintains specific levels of equity ownership in Spansion. In addition, based upon designated thresholds of Fujitsu's percentage interest in Spansion, certain actions require the affirmative vote of at least a majority of the managers appointed by Fujitsu. These actions, which primarily represent protective rights for Fujitsu as a minority member, include:

- major investments, acquisitions and dispositions of assets;

Table of Contents

- a merger or consolidation resulting in the transfer of more than 50% of the equity interests;
- settlement of major legal proceedings and other actions;
- approval of certain material contracts between us and Spansion;
- changes to the equity capital structure of the Spansion; and
- winding-up Spansion or one of its material subsidiaries.

There can be no guarantee that our interests and those of Fujitsu will be aligned with respect to such decisions and we may be unable to take steps that we believe are desirable. In addition, a reduction in our percentage interest may result in our inability to appoint a majority of Spansion's board of managers, which could result in the loss of effective control of Spansion, although the results of operations of Spansion may continue to impact significantly our results of operations and we still may be required to make loans to, and guarantee indebtedness of, Spansion.

Our operating results are subject to quarterly and seasonal sales patterns.

A substantial portion of our quarterly sales have historically 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.

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 third parties, could have a material adverse effect on us.

At times we may underutilize our manufacturing facilities as a result of reduced demand for certain of our products. During such times, many of our costs remain fixed and cannot be reduced in proportion to the reduced revenues for such a period. We are substantially increasing our manufacturing capacity by facilitating Fab 36, transitioning to smaller manufacturing process technologies and making significant capital investments in our existing manufacturing facilities. If the increase in 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 our products involves highly complex processes that require advanced equipment. Our manufacturing efficiency is an important factor in our profitability, and we cannot be sure that we will be able to maintain or increase our manufacturing efficiency to the same extent as our competitors. We continuously modify manufacturing processes in an effort to improve yields and product performance and decrease costs. We may fail to achieve acceptable yields or experience product delivery delays as a result of, among other things, capacity constraints, construction delays, delays in the development of new process technologies, changes in our process technologies, upgrades or expansion of existing facilities, or impurities or other difficulties in the manufacturing process.

We are currently completing the transition to 90-nanometer process technology for our microprocessor products. In addition, we plan to transition the manufacture of certain Flash memory products to 90-nanometer

[Table of Contents](#)

process technology in the second half of 2005. During periods when we are implementing new process technologies, manufacturing facilities may not be fully productive. A 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. 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.

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.

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 equipment or materials are not available to manufacture our products, we could be materially adversely affected.

Our manufacturing operations depend upon obtaining deliveries of equipment and adequate supplies of materials on a timely basis. We purchase equipment and materials from a number of suppliers. From time to time, suppliers may extend lead times, limit supply to us or increase prices due to capacity constraints or other factors. Because some equipment and material that we purchase is complex, it is sometimes difficult for us to substitute one supplier for another or one piece of equipment for another. In addition, certain raw materials we use in the manufacture of our products are available from a limited number of suppliers.

For example, we are largely dependent on one supplier for our 200-millimeter and 300-millimeter silicon-on-insulator (SOI) wafers. Although there are alternative sources available, we have not qualified these sources and we do not believe that they currently have sufficient capacity to meet our requirements for SOI wafers. We are also dependent on key chemicals from a limited number of suppliers and rely on a limited number of foreign companies to supply the majority of certain types of IC packages we purchase. Similarly, we purchase commercial non-Flash memory die, such as SRAM and pSRAM, from third-party suppliers and incorporate these die into Spansion MCP products. Some of these suppliers are also our competitors in the Flash memory market. 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.

Our inability to continue to attract and retain qualified personnel may hinder our product development programs.

Our future success depends upon the continued service of numerous qualified 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 materially adversely affected.

[Table of Contents](#)

We outsource to third parties certain supply-chain logistics functions, including physical distribution of our products, and co-source some information technology services.

We rely on a third-party provider to deliver our products to our customers and to distribute materials for our manufacturing 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 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 outsource or co-source these functions to third parties primarily to lower our operating expenses and to 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.

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 are difficult to predict. This 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. Because market conditions are uncertain, these and other factors could materially adversely affect us.

Our reliance on third-party distributors subjects us to certain risks.

We market and sell our products directly and through third-party distributors pursuant to agreements that can generally be terminated for convenience by either party upon prior notice to the other party. In addition, these agreements are non-exclusive and permit our distributors to offer our competitors' products. In 2004, one of our distributors, Avnet, accounted for approximately 13 percent of our consolidated gross sales. In addition, Fujitsu accounted for approximately 22 percent of our consolidated gross sales in 2004. Fujitsu primarily distributes Spansion Flash memory products. Accordingly, we are dependent on our distributors to supplement our direct marketing and sales efforts. If any significant distributor or a substantial number of our distributors terminated their relationship with us or decided to market our competitors' products over our products, our ability to bring our products to market would be impacted and we could be materially adversely affected. Additionally, 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 provide return rights for any product that we have removed from our price book or that is not more than twelve months older than the manufacturing code date. In addition, some agreements with our distributors contain standard stock rotation provisions permitting limited levels of product returns. 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. However, in the event of an unexpected significant decline in the price of our products, the price

[Table of Contents](#)

protection rights we offer to our distributors could materially adversely affect us because our revenue would decline.

Our operations in foreign countries are subject to political and economic risks, which could have a material adverse effect on us.

We have international sales operations and as part of our business strategy, we are continuing to seek expansion of product sales in high growth markets. Our international sales as a percentage of our total consolidated net sales were approximately 80 percent and 79 percent in 2003 and 2004. Nearly all product assembly and final testing of our products are performed at manufacturing facilities in China, Malaysia, Singapore and Thailand. We manufacture our microprocessors in Germany and certain Spansion Flash memory products are manufactured in Japan. We also depend on foreign foundry suppliers for the production of certain of our embedded microprocessors for personal connectivity devices and we depend on an international joint venture for the manufacture of optical photomasks that we intend to use in the manufacture of our microprocessors. 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;
- restrictions on transfers of funds and other assets of our subsidiaries between jurisdictions;
- 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 events 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 adversely affected demand for our products. Although economic conditions have improved since the second half of 2003, another decline in 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 slow down the pace of economic growth. For example, during the third quarter of 2004, decreased demand from the wireless handset market in Asia, in part due to channel inventory accumulation by wireless handset OEMs in China, contributed to a decline in Memory Products net sales. If Chinese authorities are not able to stage an orderly slowdown, China's economy could be affected. If economic conditions decline, whether in China or worldwide, we could be materially adversely affected.

In addition, 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. 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.

[Table of Contents](#)

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 volatility of the market price for our securities.

Unfavorable currency exchange rate fluctuations could adversely affect us.

As a result of our foreign operations, we have sales, costs, assets and liabilities that are denominated in foreign currencies, primarily the European Union euro and the Japanese yen. For example:

- a significant portion of our manufacturing costs for our microprocessor products is denominated in euro while sales of those products are denominated primarily in U.S. dollars;
- certain manufacturing costs for our Spansion Flash memory products are denominated in yen;
- some fixed asset purchases are denominated in euro and yen;
- sales of our Flash memory products in Japan are denominated in yen; and
- certain costs of our Fab 36 project are denominated in euro.

As a consequence, movements in exchange rates could cause our U.S. dollar-denominated expenses to increase as a percentage of net sales, affecting our profitability and cash flows. Whenever we believe appropriate, we hedge a portion of our foreign currency exchange exposure to protect against fluctuations in currency exchange rates. As of December 26, 2004 we had an aggregate of \$483 million (notional amount) of short-term foreign currency forward contracts and purchased call option contracts denominated in euro and yen. However, generally, we hedge only a portion of our foreign currency exchange exposure. Moreover, we determine our total foreign currency exchange exposure using projections of long-term expenditures for items such as equipment and materials used in manufacturing. We cannot assure you that our hedging activities will eliminate foreign exchange rate exposure. Failure to do so could have an adverse effect on our business, financial condition, results of operations and cash flow.

In addition, even where revenues and expenses are matched, we must translate euro and yen denominated results of operations, assets and liabilities for our foreign subsidiaries to U.S. dollars in our consolidated financial statements. Consequently, increases and decreases in the value of the U.S. dollar versus the euro or yen will affect our reported results of operations and the value of our assets and liabilities in our consolidated balance sheet, even if our results of operations or the value of those assets and liabilities has not changed in their original currency. These transactions could significantly affect the comparability of our results between financial periods and/or result in significant changes to the carrying value of our assets, liabilities and shareholders' equity.

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 distribution channel compete with heavily discounted products, which adversely affects demand for our products. In addition, our inability to control gray marketing activities could result in customer satisfaction issues, because any time products are purchased outside our authorized distribution channel, there is a risk that our customers are

[Table of Contents](#)

buying counterfeit or substandard products, including products that may have been altered, mishandled or damaged, or used products represented as new. 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 rely on a combination of protections provided by contracts, copyrights, patents, trademarks and other common law rights, such as trade secrets, to protect our intellectual property. However, we cannot assure you that we will be able to adequately protect our technology or other intellectual property from third party infringement or from misappropriation in the United States and abroad. 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 or, if a patent is issued, the patent may not be issued in a form that is advantageous to us. Despite our efforts to protect our rights, others may independently develop similar products, duplicate our products or design around our patents and other rights. In addition, it is difficult to monitor compliance with, and enforce, our intellectual property on a worldwide basis in a cost-effective manner.

We may become a party to intellectual property claims or litigation that could cause us to incur substantial costs or pay substantial damages or prohibit us from selling our products.

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 we will be able to obtain all necessary licenses on satisfactory terms, if at all. In the event we cannot obtain a license, we may be prevented from using some technology, which could result in our having to stop the sale of some of our products, increase the costs of selling some of our products, or damage our reputation. 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.

Our failure to comply with any applicable environmental regulations could result in a range of consequences, including fines, suspension of production, alteration of manufacturing processes, sales limitations, and criminal and civil liabilities.

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 our business.

Future litigation proceedings may materially adversely 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

[Table of Contents](#)

attention of our management and key personnel from our business operations, which could have a material adverse effect on us.

Our worldwide operations could be subject to natural disasters and other business disruptions, which could harm our future revenue and financial condition and increase our costs and expenses.

Our worldwide operations could be subject to natural disasters and other business disruptions, which could harm our future revenue and financial condition and increase our costs and expenses. For example, our corporate headquarters are located near major earthquake fault lines in California and manufacturing facilities for Spansion Flash memory products are located near major earthquake fault lines in Japan. In the event of a major earthquake, or other natural or manmade disaster, we could experience business interruptions, destruction of facilities and/or loss of life, all of which could materially adversely affect us.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

Interest Rate Risk. Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio. In order to reduce this interest rate risk, we usually invest our cash in investments with short maturities. As of December 26, 2004, substantially all of our investments in our portfolio were short-term investments and consisted primarily of bank notes, short-term corporate notes, short-term money market auction rate preferred stocks and short-term federal agency notes.

The majority of our debt obligations are fixed rate and long term. We continually monitor market conditions and enter into hedges when appropriate. We do not currently have any hedges of interest rate risk in place. We do not use derivative financial instruments for speculative or trading purposes.

Default Risk. We mitigate default risk by investing in only the highest credit quality securities and by constantly positioning our portfolio to respond appropriately to a significant reduction in a credit rating of any investment issuer or guarantor. The portfolio includes only marketable securities with active secondary or resale markets to ensure portfolio liquidity. We are averse to principal loss and ensure the safety and preservation of our invested funds by limiting default risk and market risk.

We use proceeds from debt obligations primarily to support general corporate purposes, including capital expenditures and working capital needs. However, we used the net proceeds from the sale of our 7.75% Notes along with existing cash, to prepay the full amount owed by AMD Saxony under the Dresden Term Loan, including accrued and unpaid interest through the prepayment date and a prepayment premium.

[Table of Contents](#)

The following table presents the cost basis, fair value and related weighted-average interest rates by year of maturity for our investment portfolio and debt obligations as of December 26, 2004 and comparable fair values as of December 28, 2003:

	2005	2006	2007	2008	2009	Thereafter	Total	2004 Fair value	2003 Fair value
(Dollars in Thousands)									
Investment Portfolio									
Cash equivalents:									
Fixed rate amounts	\$ 511,566	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 511,566	\$ 511,566	\$ 256,515
Weighted-average rate	2.19%	—	—	—	—	—	2.19%	2.19%	—
Variable rate amounts	\$ 281,000	—	—	—	—	—	\$ 281,000	\$ 281,000	\$ 576,204
Weighted-average rate	2.21%	—	—	—	—	—	2.21%	2.21%	—
Short-term investments:									
Fixed rate amounts	\$ 2,879	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 2,879	\$ 2,557	\$ 26,703
Weighted-average rate	2.50%	—	—	—	—	—	2.50%	2.50%	—
Variable rate amounts	\$ 274,625	—	—	—	—	—	\$ 274,625	\$ 274,625	\$ 100,860
Weighted-average rate	2.35%	—	—	—	—	—	2.35%	2.35%	—
Long-term investments:									
Equity investments	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 3,492	\$ 3,492	\$ 6,653	\$ 16,845
Fixed rate amounts	\$ 13,676	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 13,676	\$ 13,676	\$ 12,163
Weighted-average rate	2.26%	—	—	—	—	—	2.26%	2.26%	—
Total Investment Portfolio	\$ 1,083,746	\$ —	\$ —	\$ —	\$ —	\$ 3,492	\$ 1,087,238	\$ 1,090,077	\$ 989,290
Debt Obligations									
Debt—fixed rate amounts	\$ 17,760	\$ 27,940	\$ 229,440	\$ 27,940	\$ 26,676	\$ 1,100,000	\$ 1,429,756	\$ 1,927,626	\$ 902,500
Weighted-average rate	6.15%	6.19%	6.19%	6.49%	6.49%	6.39%	6.51%	6.51%	4.64%
Debt—variable rate amounts	\$ 116,322	\$ 93,423	\$ 34,742	\$ —	\$ —	\$ —	\$ 244,487	\$ 244,487	\$ 944,482
Weighted-average rate	3.96%	3.96%	1.11%	—	—	—	3.55%	3.55%	4.60%
Capital leases	\$ 96,746	\$ 83,079	\$ 4,816	\$ 212	\$ —	\$ —	\$ 184,853	\$ 183,406	\$ 244,641
Weighted-average rate	4.76%	3.82%	7.43%	0.64%	—	—	4.40%	4.40%	5.50%
Total Debt Obligations	\$ 230,828	\$ 204,442	\$ 268,998	\$ 28,152	\$ 26,676	\$ 1,100,000	\$ 1,859,096	\$ 2,355,519	\$ 2,091,623

Foreign Exchange Risk. As a result of our foreign operations, we have sales, costs, assets and liabilities that are denominated in foreign currencies, primarily the European Union euro and the Japanese yen. For example:

- a significant portion of our manufacturing costs for our microprocessor products is denominated in euro while sales of those products are denominated primarily in U.S. dollars;
- certain manufacturing costs for our Spansion Flash memory products are denominated in yen;
- some fixed asset purchases are denominated in euro and yen;
- sales of our Flash memory products in Japan are denominated in yen; and
- certain costs of our Fab 36 project are denominated in euro.

As a consequence, movements in exchange rates could cause our U.S. dollar-denominated expenses to increase as a percentage of net sales, affecting our profitability and cash flows. We use foreign currency forward and option contracts to reduce our exposure to currency fluctuations on our foreign currency exposures. The objective of these contracts is to minimize the impact of foreign currency exchange rate movements on our operating results and on the cost of capital asset acquisitions. Our accounting policy for these instruments is based on our designation of such instruments as hedges of underlying exposure to variability in cash flows. We do not use these contracts for speculative or trading purposes.

As of December 26, 2004, we had an aggregate of \$483 million (notional amount) of short-term foreign currency forward contracts and purchased call option contracts denominated in Japanese yen and European Union euro outstanding.

[Table of Contents](#)

Unrealized gains and losses related to the foreign currency forward and option contracts for the year ended December 26, 2004 were not material. We do not anticipate any material adverse effect on our consolidated financial position, results of operations or cash flows resulting from the use of these instruments in the future. However, we cannot give any assurance that these strategies will be effective or that transaction losses can be minimized or forecasted accurately. In particular, generally, we hedge only a portion of our foreign currency exchange exposure. Moreover, we determine our total foreign currency exchange exposure using projections of long-term expenditures for items such as equipment and materials used in manufacturing. We cannot assure you that our hedging activities will eliminate foreign exchange rate exposure. Failure to do so could have an adverse effect on our business, financial condition, results of operations and cash flow.

In addition, even where revenues and expenses are matched, we must translate euro and yen denominated results of operations, assets and liabilities for our foreign subsidiaries to U.S. dollars in our consolidated financial statements. Consequently, increases and decreases in the value of the U.S. dollar versus the euro or yen will affect our reported results of operations and the value of our assets and liabilities in our consolidated balance sheet, even if our results of operations or the value of those assets and liabilities has not changed in their original currency. These transactions could significantly affect the comparability of our results between financial periods and/or result in significant changes to the carrying value of our assets, liabilities and shareholders' equity.

The following table provides information about our foreign currency forward and option contracts as of December 26, 2004 and December 28, 2003. All of our foreign currency forward contracts and option contracts mature within the next 12 months.

	2004			2003		
	Notional amount	Average contract rate	Estimated fair value	Notional amount	Average contract rate	Estimated fair value
	(Thousands except contract rates)					
Foreign currency forward contracts:						
Japanese yen	\$ 10,542	104.34	\$ (73)	\$ —	—	\$ —
European Union euro	11,846	1.1846	1,685	199,458	1.1398	17,616
Foreign currency option contracts:						
Japanese yen	\$ —	—	\$ —	\$ 58,260	115.00	\$ 4,605
European Union euro	460,707	1.2869	28,375	163,400	1.1671	11,034
Total:	\$ 483,095		\$ 29,987	\$ 421,118		\$ 33,255

[Table of Contents](#)

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Financial Statements
Consolidated Statements Of Operations

	Three Years Ended December 26, 2004		
	2004	2003	2002
	(In thousands except per share amounts)		
Net sales	\$ 3,924,339	\$ 3,070,228	\$ 2,697,029
Net sales to related party (see Note 3)	1,077,096	448,940	—
Total net sales	5,001,435	3,519,168	2,697,029
Expenses:			
Cost of sales	3,032,585	2,327,063	2,105,661
Research and development	934,574	852,075	816,114
Marketing, general and administrative	807,011	587,307	670,065
Restructuring and other special charges (recoveries), net	5,456	(13,893)	330,575
	4,779,626	3,752,552	3,922,415
Operating income (loss)	221,809	(233,384)	(1,225,386)
Interest income and other, net	(31,150)	21,116	32,132
Interest expense	(112,328)	(109,960)	(71,349)
Income (loss) before minority interest, income taxes, and equity in net income of Manufacturing Joint Venture	78,331	(322,228)	(1,264,603)
Minority interest in loss of subsidiary	18,663	44,761	—
Income (loss) before income taxes and equity in net income of Manufacturing Joint Venture	96,994	(277,467)	(1,264,603)
Provision for income taxes	5,838	2,936	44,586
Income (loss) before equity in net income of Manufacturing Joint Venture	91,156	(280,403)	(1,309,189)
Equity in net income of Manufacturing Joint Venture	—	5,913	6,177
Net income (loss)	\$ 91,156	\$ (274,490)	\$ (1,303,012)
Net income (loss) per common share:			
Basic	\$ 0.25	\$ (0.79)	\$ (3.81)
Diluted	\$ 0.25	\$ (0.79)	\$ (3.81)
Shares used in per share calculation:			
Basic	358,886	346,934	342,334
Diluted	371,066	346,934	342,334

See accompanying notes

[Table of Contents](#)

Consolidated Balance Sheets

	December 26, 2004	December 28, 2004
	(In thousands except par value and share amounts)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 918,377	\$ 968,183
Compensating balance		217,621
Short-term investments	277,182	127,563
Total cash and cash equivalents, compensating balance and short-term investments	1,195,559	1,313,367
Accounts receivable	571,415	397,644
Accounts receivable from related party (see Note 3)	165,994	187,898
Allowance for doubtful accounts	(17,837)	(20,658)
Total accounts receivable, net	719,572	564,884
Inventories:		
Raw materials	63,875	42,925
Work-in-process	571,651	504,861
Finished goods	239,264	149,872
Total inventories	874,790	697,658
Deferred income taxes	87,836	102,651
Prepaid expenses and other current assets	350,240	177,145
Total current assets	3,227,997	2,855,705
Property, plant and equipment:		
Land	64,401	61,002
Buildings and leasehold improvements	2,462,965	2,277,947
Equipment	7,920,517	7,581,241
Construction in progress	589,700	152,204
Total property, plant and equipment	11,037,583	10,072,394
Accumulated depreciation and amortization	(6,803,776)	(6,223,902)
Property, plant and equipment, net	4,233,807	3,848,492
Other assets	382,406	345,575
Total assets	\$ 7,844,210	\$ 7,049,772
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 636,229	\$ 460,271
Accounts payable to related party (see Note 3)	18,894	32,345
Accrued compensation and benefits	191,431	160,644
Accrued liabilities	437,161	319,317
Accrued royalties to related party (see Note 3)	8,180	7,805
Restructuring accruals, current portion	18,997	29,770
Income taxes payable	47,145	41,370
Deferred income on shipments to distributors	141,738	72,376
Current portion of long-term debt and capital lease obligations	220,828	193,266
Current portion of long-term debt payable to related party (see Note 3)	10,000	—
Other current liabilities	115,773	90,533
Total current liabilities	1,846,376	1,407,697
Deferred income taxes	104,246	157,690
Long-term debt and capital lease obligations, less current portion	1,598,268	1,859,674
Long-term debt payable to related party (see Note 3)	30,000	40,000
Other long-term liabilities	414,626	428,761
Minority interest	840,641	717,640
Commitments and contingencies		
Stockholders' equity:		
Capital stock:		
Common stock, par value \$0.01; 750,000,000 shares authorized; shares issued: 398,505,543 on December 26, 2004 and 357,119,809 on December 28, 2003; shares outstanding: 391,738,648 on December 26, 2004 and 350,252,591 on December 28, 2003	3,917	3,502
Capital in excess of par value	2,407,770	2,051,254
Treasury stock, at cost (6,766,895 shares on December 26, 2004 and 6,867,218 shares on December 28, 2003)	(91,101)	(92,421)
Retained earnings	308,497	217,891
Accumulated other comprehensive income	380,970	258,084
Total stockholders' equity	3,010,053	2,438,310
Total liabilities and stockholders' equity	\$ 7,844,210	\$ 7,049,772

See accompanying notes

[Table of Contents](#)

Consolidated Statements of Stockholders' Equity
Three Years Ended December 26, 2004

	Common Stock		Capital in excess of par value	Treasury stock	Retained earnings	Accumulated other comprehensive income (loss)	Total stockholders' equity
	Number of shares	Amount					
December 30, 2001	340,503	\$ 3,405	\$ 1,982,653	\$ (93,436)	\$ 1,795,680	\$ (133,247)	\$ 3,555,055
(In thousands)							
Comprehensive loss:							
Net loss	—	—	—	—	(1,303,012)	—	(1,303,012)
Other comprehensive income:							
Net unrealized gains on investment, net of taxes of \$1,397	—	—	—	—	—	2,415	2,415
Less: Reclassification adjustment for gains included in earnings, net of taxes of (\$3,086)	—	—	—	—	—	(5,334)	(5,334)
Net change in cumulative translation adjustments	—	—	—	—	—	153,593	153,593
Net unrealized gains on cash flow hedges, net of taxes of \$33,700	—	—	—	—	—	62,504	62,504
Less: Reclassification adjustment for gains included in earnings, net of taxes of (\$16,189)	—	—	—	—	—	(30,026)	(30,026)
Total other comprehensive income							183,152
Total comprehensive loss							(1,119,860)
Issuance of shares:							
Employee stock plans	4,025	40	28,920	219	—	—	29,179
Compensation recognized under employee stock plans	—	—	2,891	—	—	—	2,891
December 29, 2002	344,528	\$ 3,445	\$ 2,014,464	\$ (93,217)	\$ 492,668	\$ 49,905	\$ 2,467,265
Comprehensive loss:							
Net loss	—	—	—	—	(274,490)	—	(274,490)
Other comprehensive income:							
Net unrealized gains on investment, net of taxes of \$3,692	—	—	—	—	—	7,723	7,723
Less: Reclassification adjustment for gains included in earnings, net of taxes of (\$1,371)	—	—	—	—	—	(3,736)	(3,736)
Net change in cumulative translation adjustments	—	—	—	—	—	219,123	219,123
Net unrealized gains on cash flow hedges, net of taxes of \$28,612	—	—	—	—	—	51,447	51,447
Less: Reclassification adjustment for gains included in earnings, net of taxes of (\$33,700)	—	—	—	—	—	(62,504)	(62,504)
Minimum Pension Liability	—	—	—	—	—	(3,874)	(3,874)
Total other comprehensive income							208,179
Total comprehensive loss							(66,311)
Issuance of shares:							
Employee stock plans	5,724	57	34,870	796	(287)	—	35,436
Compensation recognized under employee stock plans	—	—	1,920	—	—	—	1,920
December 28, 2003	350,252	\$ 3,502	\$ 2,051,254	\$ (92,421)	\$ 217,891	\$ 258,084	\$ 2,438,310
Comprehensive loss:							
Net income	—	—	—	—	91,156	—	91,156
Other comprehensive income:							
Net unrealized gains on investment, net of taxes of (\$57)	—	—	—	—	—	73	73
Less: Reclassification adjustment for gains included in earnings, net of taxes of (\$2,412)	—	—	—	—	—	(4,215)	(4,215)
Net change in cumulative translation adjustments	—	—	—	—	—	114,850	114,850
Net unrealized gains on cash flow hedges, net of taxes of \$20,636	—	—	—	—	—	63,625	63,625
Less: Reclassification adjustment for gains included in earnings, net of taxes of (28,612)	—	—	—	—	—	(51,447)	(51,447)
Total other comprehensive income							122,886
Total comprehensive loss							214,042
Issuance of shares:							
Employee stock plans	12,096	121	122,786	1,320	(550)	—	123,677
Induced conversion of convertible debt	29,391	294	232,716	—	—	—	233,010
Compensation recognized under employee stock plans	—	—	1,014	—	—	—	1,014
December 26, 2004	391,739	\$ 3,917	\$ 2,407,770	\$ (91,101)	\$ 308,497	\$ 380,970	\$ 3,010,053

See accompanying notes

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Three Years Ended December 26, 2004		
	2004	2003	2002
	(In thousands)		
Cash flows from operating activities:			
Net income (loss)	\$ 91,156	\$ (274,490)	\$ (1,303,012)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Minority interest in loss of subsidiary	(18,663)	(44,761)	—
Depreciation	1,173,598	955,560	739,608
Amortization	50,654	40,103	16,561
Provision for doubtful accounts	(2,821)	1,752	(364)
Other than temporary impairment of equity investments	—	2,339	4,654
(Benefit) Provision for deferred income taxes	(39,240)	2,971	35,427
Restructuring and other special charges (recoveries), net	5,456	(9,994)	311,250
Charge from induced conversion of 4.5% Notes (See Note 7)	31,767	—	—
Interest expense paid with stock	3,769	—	—
Charge for early extinguishment of Dresden Term Loan	6,012	—	—
Foreign grant and subsidy income	(87,485)	(75,302)	(59,324)
Gain from partial sale of net assets to Spansion LLC (see Note 3)	—	(5,681)	—
Net loss on equipment sale and lease back transaction (see Note 7)	—	16,088	—
Net (gain) loss on disposal of property, plant and equipment	(3,775)	3,862	11,930
Net (gain) loss realized on sale of available-for-sale securities	(7,464)	(3,736)	(5,334)
Compensation recognized under employee stock plans	1,014	1,920	2,891
Undistributed income of joint venture	—	(5,913)	(6,177)
Recognition of deferred gain on sale of building	(1,681)	(1,681)	(1,681)
Tax benefit (expense) allocated to minority interest	5,938	(1,766)	—
Changes in operating assets and liabilities:			
(Increase) decrease in accounts receivable	(171,769)	67,877	266,393
Decrease (increase) in accounts receivable from related party	21,904	(187,898)	—
Increase in inventories	(179,981)	(77,426)	(51,975)
Decrease (increase) in prepaid expenses	35,062	70,247	(31,848)
Increase in other assets	(21,061)	(12,614)	(100,221)
(Increase) decrease in tax refund receivable	(12,600)	(6,555)	63,384
Increase (decrease) in taxes payable	5,775	19,882	(34,988)
Refund of customer deposits under long-term purchase agreements	(20,500)	(26,500)	(39,000)
Net increase (decrease) in payables and accrued liabilities	234,532	(192,848)	61,863
(Decrease) increase in payables and accrued liabilities to related party	(13,076)	40,150	—
Net cash provided by (used in) operating activities	1,086,521	295,586	(119,963)
Cash flows from investing activities:			
Purchases of property, plant and equipment	(1,440,137)	(570,316)	(705,147)
Net cash acquired from formation and consolidation of Spansion LLC	—	147,616	—
Proceeds from sale of property, plant and equipment	34,183	29,939	8,618
Acquisitions, net of cash acquired	—	(6,265)	(26,509)
Purchases of available-for-sale securities	(377,087)	(1,029,884)	(4,465,252)
Proceeds from sale and maturities of available-for-sale securities	227,257	1,512,093	4,333,901
Net cash (used in) provided by investing activities	(1,555,784)	83,183	(854,389)
Cash flows from financing activities:			
Proceeds from notes payable to banks	—	7,350	121,251
Proceeds from borrowings, net of issuance costs	745,377	—	1,006,027
Proceeds from borrowings from related party (see Note 3)	—	40,000	—
Repayments of debt and capital lease obligations	(897,619)	(140,933)	(324,744)
Proceeds from foreign grants and subsidies	30,110	155,349	75,727
Proceeds from sale leaseback transactions (see Note 7)	59,531	244,647	—
Proceeds from limited partners' contribution (see Note 7)	127,916	—	—
Change in compensating balance	223,808	(74,447)	—
Proceeds from issuance of stock	123,677	35,436	29,179
Net cash provided by financing activities	412,800	267,402	907,440
Effect of exchange rate changes on cash and cash equivalents	6,657	32,173	22,884
Net (decrease) increase in cash and cash equivalents	(49,806)	678,344	(44,028)
Cash and cash equivalents at beginning of year	968,183	289,839	333,867

CONSOLIDATED STATEMENTS OF CASH FLOWS—(Continued)

	Three Years Ended December 26, 2004		
	2004	2003	2002
		(In thousands)	
Cash and cash equivalents at end of year	\$ 918,377	\$ 968,183	\$ 289,389
Supplemental disclosures of cash flow information:			
Cash paid (refunded) during the year for:			
Interest, net of amounts capitalized (see Note 8)	\$ 69,814	\$ 81,303	\$ 45,246
Income taxes	\$ 33,550	\$ (7,309)	\$ (14,853)
Non-cash financing activities:			
Equipment sale leaseback transaction	\$ 34,366	\$ 273,131	\$ —
Equipment capital leases	\$ —	\$ 12,157	\$ —
Induced conversion of senior convertible debt	\$ 201,000	\$ —	\$ —
Non-cash investing activities:			
Equipment purchased through acquisition	\$ —	\$ 2,932	\$ —
Formation and consolidation of Spansion LLC (see Note 3):			
Total non-cash net assets of Manufacturing Joint Venture	\$ —	\$ 768,000	\$ —
Total non-cash net assets contributed by Fujitsu	\$ —	\$ 154,000	\$ —
AMD contribution of investment in Manufacturing Joint Venture	\$ —	\$ 390,069	\$ —

See accompanying notes

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 26, 2004, December 28, 2003 and December 29, 2002

NOTE 1: Nature of Operations

Advanced Micro Devices, Inc. (the Company or AMD) is a semiconductor manufacturer with manufacturing facilities in the United States, Europe, and Asia and sales offices throughout the world. References herein to the "Company" means AMD and its consolidated subsidiaries, including Spansion LLC and its subsidiaries. The Company designs, manufactures and markets industry-standard digital integrated circuits, or ICs, that are used in many diverse product applications such as desktop and mobile personal computers, workstations, servers, communications equipment such as mobile telephones, and automotive and consumer electronics. The Company's products include microprocessors, Flash memory devices and embedded microprocessors for personal connectivity devices and specific consumer markets.

NOTE 2: Summary of Significant Accounting Policies

Fiscal Year. The Company uses a 52- to 53-week fiscal year ending on the last Sunday in December. Fiscal 2004, 2003 and 2002 were 52-week years, which ended on December 26, December 28 and December 29.

Principles of Consolidation. The consolidated financial statements include the Company's accounts and those of its majority and wholly owned subsidiaries, including Spansion LLC (see Note 3 and Note 7). Upon consolidation, all significant intercompany accounts and transactions are eliminated, and amounts pertaining to the noncontrolling ownership interests held by third parties in the operating results and financial position of the Company's majority owned subsidiaries, are reported as "minority interest." Also, included in the financial statements, under the equity method of accounting, are the Company's percentage equity share of certain investees' operating results, where the Company has the ability to exercise significant influence over the operations of the investee.

Reclassification. Certain prior period amounts have been reclassified to conform to the current period presentation.

Use of Estimates. The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of commitments and contingencies at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results are likely to differ from those estimates, and such differences may be material to the financial statements. Areas where management uses subjective judgment include, but are not limited to, revenue reserves, inventory valuation, impairment of long-lived assets, restructuring charges, deferred income taxes and commitments and contingencies.

Revenue Recognition. The Company recognizes revenue from products sold directly to customers, including original equipment manufacturers (OEMs), when persuasive evidence of an arrangement exists, the price is fixed or determinable, shipment is made and collectibility is reasonably assured. Estimates of product returns, allowances and future price reductions, based on actual historical experience and other known or anticipated trends and factors, are recorded at the time revenue is recognized. The Company sells to distributors under terms allowing the distributors certain rights of return and price protection on unsold merchandise held by them. The distributor agreements, which may be canceled by either party upon specified notice, generally contain a provision for the return of the Company's products in the event the agreement with the distributor is terminated and the distributor's products have not been sold. Accordingly, the Company defers the gross margin resulting from the deferral of both revenue and related product costs from sales to distributors with agreements that have the aforementioned terms until the merchandise is resold by the distributors. The Company also sells its products to distributors with substantial independent operations under sales arrangements whose terms do not allow for

[Table of Contents](#)

rights of return or price protection on unsold products held by them. In these instances, the Company recognizes revenue when it ships the product directly to the distributors. The Company records estimated reductions to revenue under distributor and customer incentive programs, including certain advertising and marketing promotions and volume based incentives and special pricing arrangements, at the time the related revenues are recognized. For transactions whereby the Company reimburses customers for a portion of the customer's cost to perform specific product advertising or marketing and promotional activities, such amounts are recorded as a reduction of revenue unless they qualify for cost recognition under EITF Issue No. 01-09, "Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)." Shipping and handling costs associated with product sales are included in cost of sales.

Inventories. Inventories are stated at standard cost adjusted to approximate the lower of actual cost (first-in, first-out method) or market (net realizable value). Generally inventories on hand in excess of forecasted demand for six months or less are not valued. Obsolete inventories are written off.

Impairment of Long-Lived Assets. For long-lived assets used in operations, the Company records impairment losses when events and circumstances indicate that these assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amounts of those assets. If less, the impairment losses are based on the excess of the carrying amounts of these assets over their respective fair values. Their fair values would then become the new cost basis. Fair value is determined by discounted future cash flows, appraisals or other methods. For assets held for sale, impairment losses are measured at the lower of the carrying amount of the assets or the fair value of the assets less costs to sell. For assets to be disposed of other than by sale, impairment losses are measured as their carrying amount less salvage value, if any, at the time the assets cease to be used.

Restructuring Charges. The Company accounted for restructuring charges and subsequent changes in original estimates in accordance with EITF 94-3 for exit and disposal activities as they were initiated prior to December 30, 2002. Under EITF 94-3 restructuring charges are recorded upon approval of a formal management plan and are included in the operating results of the period in which such plans have been approved. The Company reviews remaining restructuring accruals on a quarterly basis and adjusts these accruals when changes in facts and circumstances suggest actual amounts will differ from the initial estimates. Changes in estimates occur when it is apparent that exit and other costs accrued will be more or less than originally estimated.

In July 2002, the FASB issued Statement of Financial Accounting Standards No. 146, "Accounting for Costs associated with Exit or Disposal Activities" (SFAS 146). SFAS 146 addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies EITF Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)" (EITF 94-3). The principal difference between SFAS 146 and EITF 94-3 relates to SFAS 146's timing for recognition of a liability for a cost associated with an exit or disposal activity. SFAS 146 requires that a liability for an exit cost associated with an exit or disposal activity be recognized when the liability is incurred. The Company has applied SFAS 146 prospectively as of December 30, 2002, the beginning of fiscal year 2003. Because the Company has not initiated any restructuring activity since its adoption, SFAS 146 has not had a material impact on the Company's operating results.

Commitments and Contingencies. From time to time the Company is a defendant or plaintiff in various legal actions that arise in the normal course of business. The Company is also a party to environmental matters, including local, regional, state and federal government cleanup activities at or near locations where the Company currently or has in the past conducted business. The Company is also a guarantor of various third-party obligations and commitments. The Company is required to assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of reserves required for these commitments and contingencies, if any, that would be charged to earnings, includes assessing the probability of adverse outcomes and estimating the amount of potential losses. The required reserves, if any, may change in the future due to new developments in each matter or changes in circumstances,

[Table of Contents](#)

such as a change in settlement strategy. Changes in required reserves could increase or decrease our earnings in the period the changes are made. (See Note 15.)

Cash Equivalents. Cash equivalents consist of financial instruments that are readily convertible into cash and have original maturities of three months or less at the time of acquisition.

Investments. The Company classifies its marketable debt and equity securities at the date of acquisition as either held to maturity or available for sale. Substantially all of the Company's marketable debt and equity securities are classified as available-for-sale. These securities are reported at fair market value with the related unrealized gains and losses included in accumulated other comprehensive income (loss), net of tax, a component of stockholders equity. Realized gains and losses and declines in the value of securities determined to be other-than-temporary are included in interest income and other, net. The cost of securities sold is based on the specific identification method.

The Company classifies investments with maturities between three and 12 months as short-term investments. Short-term investments consist of money market auction rate preferred stocks and debt securities such as commercial paper, corporate notes, certificates of deposit and marketable direct obligations of United States governmental agencies. Available-for-sale securities with maturities greater than twelve months are classified as short term when they represent investments of cash that are intended to be used in current operations.

Derivative Financial Instruments. The Company is subject to foreign currency risks for transactions denominated in yen and euros. Therefore, in the normal course of business, the Company's financial position is routinely subjected to market risk associated with foreign currency rate fluctuations. The Company's general practice is to ensure that material business exposure to foreign exchange risks are identified, measured and minimized using the most effective and efficient methods to eliminate or reduce such exposures. To protect against the reduction in value of forecasted yen and euro denominated cash flows resulting from these transactions, the Company has instituted a foreign currency cash flow hedging program. Under this program, the Company purchases foreign currency forward contracts and sells or purchases foreign currency option contracts, generally expiring within twelve months, to hedge portions of its forecasted foreign currency denominated cash flows. These foreign currency contracts are carried on the Company's balance sheet at fair value, and are reflected in prepaid expenses and other current assets or accrued liabilities, with the effective portion of the contracts' gain or loss initially recorded in accumulated other comprehensive income (loss) and subsequently recognized in cost of sales in the same period the hedged forecasted transaction affects operations. Generally, the gain or loss on derivative contracts, when recognized in cost of sales, offsets the gain or loss on the hedged foreign currency assets, liabilities or firm commitments. As of December 26, 2004, the Company expects to reclassify the amount accumulated in other comprehensive income (loss) to operations within the next twelve months upon the recognition in operations of the hedged forecasted transactions. The Company does not use derivatives for speculative or trading purposes.

The effectiveness test for these foreign currency contracts utilized by the Company is the fair value to fair value comparison method. Under this method, the Company includes the time value portion of the change in value of the currency forward contract in its effectiveness assessment. Any ineffective portion of the hedges is recognized currently in interest income and other, net, which has not been significant.

If a cash flow hedge should be discontinued because it is probable that the original forecasted transaction will not occur, the net gain or loss in accumulated other comprehensive income (loss) will be reclassified into operations as a component of interest income and other, net.

Premiums paid for foreign currency forward and option contracts are immediately charged to operations.

Property, Plant and Equipment. Property, plant and equipment are stated at cost, except for assets deemed to have been sold as part of the Spansion LLC transaction (see Note 3). Depreciation and amortization are

[Table of Contents](#)

provided on a straight-line basis over the estimated useful lives of the assets for financial reporting purposes. Estimated useful lives for financial reporting purposes are as follows: equipment, two to five years; building improvements, up to 26 years; and leasehold improvements, the shorter of the remaining terms of the leases or the estimated economic useful lives of the improvements.

Treasury Stock. The Company accounts for treasury stock acquisitions using the cost method. For reissuance of treasury stock, to the extent that the reissuance price is more than the cost, the excess is recorded as an increase to Paid in Capital. If the reissuance price is less than the cost, the difference is also recorded to Paid in Capital to the extent there is a cumulative treasury stock paid in capital balance. Once the cumulative balance is reduced to zero, any remaining difference resulting from the sale of treasury stock below cost is recorded to Retained Earnings.

Product Warranties. The Company offers a three-year limited warranty to end users for microprocessor products that are commonly referred to as “processors in a box” and a one-year limited warranty to direct purchasers for all other microprocessor, Flash memory and embedded processor products. Under limited circumstances, the Company may offer an extended limited warranty to direct purchasers of Flash memory products or of microprocessor products that are intended for systems targeted at the commercial and embedded end markets.

Foreign Currency Translation/Transactions. The functional currency of the Company’s foreign subsidiaries, except AMD Saxony Limited Liability Company & Co. KG (AMD Saxony), AMD Fab 36 LLC & Co. KG (AMD Fab 36 KG), and Spansion Japan, is the U.S. dollar. Translation adjustments resulting from remeasuring the foreign currency denominated financial statements of subsidiaries into the U.S. dollar are included in operations, except for AMD Saxony, AMD Fab 36 KG, and Spansion Japan, whose functional currencies are their local currencies. The functional currency of AMD Saxony & Co. KG and AMD Fab 36 KG is the euro. The functional currency of Spansion Japan is the yen. Adjustments resulting from translating the foreign currency financial statements of AMD Saxony, AMD Fab 36 LLC & Co. KG, and Spansion Japan into the U.S. dollar are included as a separate component of accumulated other comprehensive income (loss). In addition, the gains or losses resulting from transactions denominated in currency other than the functional currencies are recorded in net income (loss). The aggregate exchange gain included in determining net income (loss) was \$40 million in 2004, \$88 million in 2003 and \$31 million in 2002.

Guarantees. The Company accounts for guarantees in accordance with FASB Interpretation No. 45 (FIN 45), “Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others.” Under FIN 45, a liability for the fair value of the obligation undertaken in issuing the guarantee is recognized. However, this is limited to those guarantees issued or modified after December 31, 2002. The recognition of fair value is not required for certain guarantees such as the parent’s guarantee of a subsidiary’s debt to a third party or guarantees on product warranties. For those guarantees excluded from FIN 45’s fair value recognition provision, financial statement disclosures of their terms are made (see Note 12).

Foreign Grants and Subsidies. The Company receives investment grants and allowances as well as interest subsidies under a Subsidy Agreement with the Federal Republic of Germany and the State of Saxony in connection with the construction and facilitization of Fab 30 in Dresden, Germany. Generally, such grants and subsidies are subject to forfeiture in declining amounts over the life of the agreement, if the Company does not maintain certain levels of employment or meet other agreement conditions. Accordingly, amounts received under the Subsidy Agreement are recorded as a long-term liability on the Company’s financial statements and are being amortized to operations ratably over the contractual life of the Subsidy Agreement as a reduction to operating expenses through December of 2007.

From time to time, the Company also applies for subsidies relating to certain research and development projects. These research and development subsidies are recorded as a reduction of research and development expenses when all conditions and requirements are met. In addition, the Company also receives investment

[Table of Contents](#)

grants and allowances in connection with the construction and facilitization of Fab 36 in Dresden, Germany. Accounting for these grants and allowances is similar to those for Fab 30.

Advertising Expenses. Advertising expenses for 2004, 2003 and 2002 were approximately \$225 million, \$148 million and \$199 million, respectively. Cooperative advertising funding obligations under customer incentive programs are accrued and the costs recorded at the same time the related revenue is recognized. Cooperative advertising expenses are recorded as marketing, general and administrative expense to the extent the cash paid does not exceed the fair value of the advertising benefit received. Any excess of cash paid over the fair value of the advertising benefit received is recorded as a reduction of revenue in accordance with EITF 01-09, "Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)."

Net Income (Loss) Per Common Share. Basic net income (loss) per share is computed using the weighted-average number of common shares outstanding during the period. Potential dilutive common shares may include incremental shares that would be issued upon the assumed exercise of outstanding employee stock options and the shares issuable upon the assumed conversion of outstanding convertible notes and debentures. Basic and diluted net income per common share for 2004 were both 0.25 per share. Weighted-average common shares outstanding used to calculate basic net income per share were approximately 359 million and weighted average common shares used to calculate diluted net income per share were approximately 371 million, which included approximately 12 million incremental shares assuming exercise of outstanding employee stock options. Potential dilutive common shares of approximately 48.7 million for the year ended December 26, 2004, which were associated with the assumed conversion of outstanding convertible notes and debentures, were not included in the net income per common share calculation, as their inclusion would have been antidilutive. The Company incurred net losses for 2003 and 2002. Potential dilutive common shares of approximately 79.0 million and 27.4 million for the years ended December 28, 2003, and December 29, 2002, which included both shares issuable upon the assumed exercise of outstanding employee stock options and the assumed conversion of outstanding convertible notes and debentures, were not included in the net loss per common share calculation, as their inclusion would have been antidilutive.

Accumulated Other Comprehensive Income (Loss). Unrealized gains or losses on the Company's available-for-sale securities, deferred gains and losses on derivative financial instruments qualifying as cash flow hedges, changes in minimum pension liabilities, and foreign currency translation adjustments are included in accumulated other comprehensive income (loss).

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

	2004	2003
	(in thousands)	
Net unrealized gains on available-for-sale securities, net of taxes of \$1,010 in 2004 and \$3,479 in 2003	\$ 1,997	\$ 6,139
Net unrealized gains on cash flow hedges, net of taxes of \$0 in 2004 and \$7,976 in 2003	30,200	18,022
Minimum Pension Liability	(3,874)	(3,874)
Cumulative translation adjustments	352,647	237,797
	<u>\$ 380,970</u>	<u>\$ 258,084</u>

Stock-based Compensation and Employee Stock Plans. The Company has elected to use the intrinsic value method under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employee" (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 stock option plans, and amortizes deferred compensation, if any, ratably over the vesting period of the options.

[Table of Contents](#)

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 reflects 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. See Note 10 for detailed assumptions used by the Company to compute the fair value of stock-based awards for purposes of pro forma disclosures under SFAS 123. Following is the pro forma effect on net income (loss) and net income (loss) per share for all periods presented had the Company applied SFAS 123's fair value method of accounting for stock-based awards issued to its employees.

	2004	2003	2002
	(In thousands except per share amounts)		
Net income (loss)—as reported	\$ 91,156	\$ (274,490)	\$ (1,303,012)
Plus: compensation expense recorded under APB 25	995	1,920	2,891
Less: SFAS 123 compensation expenses	(155,519)	(80,464)	(149,827)
Net income (loss)—pro forma	\$ (63,368)	\$ (353,034)	\$ (1,449,948)
Basic net income (loss) per common share—as reported	\$ 0.25	\$ (0.79)	\$ (3.81)
Diluted net income (loss) per common share—as reported	\$ 0.25	\$ (0.79)	\$ (3.81)
Basic net loss per common share—pro forma	\$ (0.18)	\$ (1.02)	\$ (4.24)
Diluted net loss per common share—pro forma	\$ (0.18)	\$ (1.02)	\$ (4.24)

New Accounting Pronouncements. In December 2004, the Financial Accounting Standard Board (FASB) issued a revision to Statement of Financial Accounting Standard No. 123, "Accounting for Stock-Based Compensation" (SFAS 123R). SFAS 123R eliminates the Company's ability to use the intrinsic value method of accounting under APB 25, and generally requires a public entity to reflect on its income statement, instead of pro forma disclosures in its financial footnotes, the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award. The grant-date fair value will be estimated using option-pricing models adjusted for the unique characteristics of those equity instruments. Among other things, SFAS 123R also requires entities to estimate the number of instruments for which the requisite service is expected to be rendered, and if the terms or conditions of an equity award are modified after the grant date, to recognize incremental compensation cost for such a modification by comparing the fair value of the modified award with the fair value of the award immediately before the modification. In addition, SFAS 123R amends FASB Statement No. 95, "Statement of Cash Flows," to require that excess tax benefits be reported as a financing cash inflow rather than as a reduction of taxes paid. SFAS 123R is effective generally for public companies as of the beginning of the first interim or annual reporting period that begins after June 15, 2005. SFAS 123R applies to all awards granted after the required effective date and to awards modified, repurchased, or cancelled after that date. As of the required effective date, all public entities that used the fair-value-based method for either recognition or disclosure under the original Statement 123 will apply this revised statement using a modified version of prospective application. Under that transition method, compensation cost is recognized on or after the required effective date for the portion of outstanding awards for which the requisite service has not yet been rendered, based on the grant-date fair value of those awards calculated under the original Statement 123 for either recognition or pro forma disclosures. For periods before the required effective date, those entities may elect to apply a modified version of retrospective application under which financial statements for prior periods are adjusted on a basis consistent with the pro forma disclosures required for those periods by the original Statement 123. The Company is currently evaluating the requirements of SFAS 123R and will adopt this statement at the effective date. Although the exact amount cannot be estimated at this time, the Company expects that the adoption of this statement will have a material effect on its financial statements.

NOTE 3: Related-Party Transactions

The Company and Fujitsu Limited formed FASL LLC, later renamed Spansion LLC, effective June 30, 2003. 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 the transaction. The Company is accounting for the Spansion LLC transaction as a partial step acquisition and purchase business combination under the provision for SFAS 141, Business Combinations, and EITF Consensus No. 01-02, "Interpretations of APB Opinion No. 29."

As part of the formation of Spansion LLC, both the Company and Fujitsu contributed their respective investments in Fujitsu AMD Semiconductor Limited, their former Manufacturing Joint Venture, (formerly referred to as FASL) to the new venture. As a result of this transaction, the Company acquired an incremental 10.008 percent controlling interest in the net assets of the Manufacturing Joint Venture (the difference between the Company's 60 percent ownership of these net assets after their contribution to Spansion LLC and its previous 49.992 percent ownership in these same net assets prior to their contribution to Spansion LLC). Accordingly, the Company recorded its acquired incremental 10.008 percent interest in the Manufacturing Joint Venture's contributed net assets based on the assets' fair value on the effective date of the transaction. The remaining 89.992 percent interest in the Manufacturing Joint Venture's net assets was recorded at historical carrying value.

The Company also contributed its Flash memory inventory, its manufacturing facility located in Austin, Texas (Fab 25), its Flash memory research and development facility in Sunnyvale, California, and its Flash memory assembly and test facilities in Thailand, Malaysia and Suzhou, China to Spansion LLC. The Company recorded its continuing 60 percent interest in these net assets at their historical carrying values. The remaining 40 percent interest in these net assets was treated as being sold to Fujitsu and, accordingly, 40 percent of the carrying values of these net assets were adjusted to and recorded based on the net assets' fair value on the effective date of the transaction. During the fourth quarter of 2003, the Company completed its determination of the fair value of the assets and liabilities of Spansion LLC. The excess of the fair value of the net assets treated as sold over their historical carrying value was approximately \$57 million. However, the gain of approximately six million dollars recognized by the Company and recorded in interest income and other, net, was limited to the excess of the fair value of the consideration received by the Company in the form of the Company's 60 percent equity interest in Fujitsu's contributions and the incremental 10.008 percent interest in the former Manufacturing Joint Venture's net assets less direct costs of the transaction, over the 40 percent interest in the book value of the net assets contributed by the Company to Spansion LLC.

Fujitsu also contributed its Flash memory division to Spansion LLC, including related inventory, cash, and its Flash memory assembly and test facility in Malaysia. The Company is deemed to have acquired a 60 percent interest in the net assets contributed by Fujitsu and, accordingly, 60 percent of the carrying values of these net assets were recorded based on the net assets' fair value. The remaining 40 percent interest in these net assets was recorded at historical carrying value.

As part of the transaction, the Company and Fujitsu entered into various service contracts with Spansion LLC. The Company will continue to provide, among other things, certain information technology, facilities, logistics, legal, tax, finance, human resources, and environmental health and safety services to Spansion LLC. Under these contracts, Fujitsu will provide, among other things, certain information technology, research and development, quality assurance, insurance, facilities, environmental, and human resources services primarily to Spansion LLC's manufacturing facilities in Japan. Fees earned by the Company and incurred by Spansion LLC for these services are eliminated in consolidation.

In connection with the above transaction, Fujitsu loaned Spansion LLC \$40 million pursuant to a promissory note. The note has a term of three years and is repayable in four equal payments, on September 30, 2005, December 31, 2005, March 31, 2006 and June 30, 2006. The note bears interest at LIBOR plus four

[Table of Contents](#)

percent but in no event can the interest rate exceed seven percent (5.98 percent at December 26, 2004). Interest is payable quarterly.

The following table summarizes the final purchase price allocation to the assets and liabilities of Spansion LLC at June 30, 2003, the effective date of the transaction, including the fair values of the assets and liabilities attributable to the Manufacturing Joint Venture, the Company's contributions and Fujitsu's contributions. Upon consolidation, all amounts pertaining to Fujitsu's interest in Spansion LLC are reported as minority interest on the accompanying financial statements. Management considered a number of factors, including independent appraisals and valuations, in determining the final purchase price allocation.

	Manufacturing Joint Venture	AMD's Contributions	Fujitsu's Contributions	Total
	(Dollars in millions)			
Cash	\$ —	\$ 122	\$ 189	\$ 311
Inventory	55	220	128	403
Fixed assets	963	1,017	33	2,013
Intangible assets	46	24	1	71
Debt and capital lease obligations	(148)	(609)	(40)	(797)
Other assets (liabilities), net	(100)	(2)	(1)	(103)
Fair value of net assets exchanged/acquired on acquisition date	816	772	310	1,898
Percent of fair value recorded in the purchase business combination	10.008%	40%	60%	
Fair value recorded	\$ 82	\$ 309	\$ 186	\$ 577
Net book value of contributions on acquisition date	762	629	293	1,684
Percent of book value recorded in the purchase business combination	89.992%	60%	40%	
Historical carrying value recorded	\$ 686	\$ 377	\$ 117	\$ 1,180
Initial purchase combination basis of net assets acquired	\$ 768	\$ 686	\$ 303	\$ 1,757

The intangible assets recorded consist of the estimated fair value of the manufacturing and product distribution contracts between Spansion LLC and the Company and Spansion LLC and Fujitsu, which are determined to have an estimated useful life of four years, as well as the estimated fair value of the assembled work force, which is reflected as goodwill. No value was assigned to in-process research and development because the Company and Fujitsu performed all research and development activities for the Manufacturing Joint Venture, and the Company and Fujitsu did not convey in-process technology rights to Spansion LLC. Additionally, Spansion LLC pays intellectual property royalties to the Company and Fujitsu for technological know-how used in its business operations at royalty rates deemed to approximate fair market values. No additional intangible assets were identified in connection with the transaction.

The following unaudited pro forma financial information includes the combined results of operations of the Company and the Manufacturing Joint Venture as though the Manufacturing Joint Venture had been consolidated by the Company at the beginning of the years ended December 28, 2003 and December 29, 2002. The historically reported operating results of the Manufacturing Joint Venture do not include Flash memory sales and related operating expenses recorded by Fujitsu's former Flash memory operations in periods preceding June 30, 2003 because the information is not available to the Company. Depreciation and amortization expenses were estimated for the unaudited pro forma periods based on the amounts at which fixed and intangible assets were recorded at the acquisition date. Unaudited pro forma interest income and expense are not material and are not included in the unaudited pro forma financial information. On an unaudited pro forma basis, had the transaction occurred at the beginning of fiscal 2003, revenue, net loss and net loss per share for 2003 would have been \$3.7 billion, \$278 million and \$0.80. On an unaudited pro forma basis, had the transaction occurred at the beginning

[Table of Contents](#)

of 2002, revenue, net loss and net loss per share for 2002 would have been \$3.1 billion, \$1.3 billion, and \$3.77. These unaudited pro forma results are not necessarily indicative of the operating results that would have occurred if the transaction had been completed at the beginning of the periods indicated. The unaudited pro forma results are not necessarily indicative of future operating results.

In addition, the Manufacturing Joint Venture provided a defined benefit pension plan and a lump-sum retirement benefit plan to certain employees. Although these multiemployer plans continue to be administered by Fujitsu, the Company has assumed related pension liabilities. These plans cover Spansion Japan's employees formerly assigned from Fujitsu and employees hired directly by Spansion Japan. 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 year ended December 28, 2003, since the inception of Spansion LLC, the Company recorded an estimated pension cost of approximately \$7 million and has recorded an estimated pension benefit obligation liability of approximately \$26 million. For the year ended December 26, 2004, the Company recorded pension cost of approximately \$7 million and as of December 26, 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's employees was approximately \$41 million and the estimated total pension plan assets related to Spansion Japan's employees were approximately \$14 million.

The following table presents the significant related party transactions and account balances between the Company and the Manufacturing Joint Venture for the periods in which the former investment was accounted for under the equity method (through June 29, 2003):

	Six months ended June 29, 2003	Year ended December 29, 2002
Royalty income from Manufacturing Joint Venture	\$ 24,611	\$ 38,488
Purchases from Manufacturing Joint Venture	356,595	443,209
Sales to Manufacturing Joint Venture	222,570	25,780

The following is condensed unaudited financial data for the Manufacturing Joint Venture for periods through June 29, 2003:

	Six months ended June 29, 2003	Year ended December 29, 2002
Net sales	\$ 565,037	\$ 854,199
Gross profit (loss)	(12,955)	66,798
Operating income (loss)	(14,958)	63,099
Net income (loss)	(9,618)	5,051

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.

[Table of Contents](#)

As a result of the Spansion LLC transaction, Fujitsu became a related party of the Company effective June 30, 2003. The following tables present the significant transactions and account balances between the Company and Fujitsu for the year ended December 26, 2004 and from June 30, 2003 to December 28, 2003 and balances receivable from or payable to Fujitsu at December 26, 2004 and December 28, 2003, respectively:

	Year ended December 26, 2004	Six Months ended December 28, 2003
	(in thousands)	
Sales to Fujitsu	\$ 1,077,096	\$ 448,940
Royalty expenses due to Fujitsu	18,080	8,672
Distributor commissions due to Fujitsu	67,996	29,706
Service fees due to Fujitsu	33,048	21,261
	December 26, 2004	December 28, 2003
	(in thousands)	
Accounts receivable from Fujitsu	\$ 165,994	\$ 187,898
Accounts payable to Fujitsu	18,894	32,345
Accrued royalties to Fujitsu	8,180	7,805
Notes payable to Fujitsu	40,000	40,000

The royalty expense due to Fujitsu represents the payments from Spansion LLC for its use of Fujitsu's intellectual property. The distributor commission expense due to Fujitsu represents the compensation that Spansion LLC pays to Fujitsu in connection with Fujitsu's distribution of Spansion™ Flash memory products.

The Company's transactions with Fujitsu are based on terms that are consistent with those of similar arms-length transactions executed with third parties.

[Table of Contents](#)

NOTE 4: Financial Instruments

Available-for-sale securities held by the Company as of December 26, 2004 and December 28, 2003 are as follows:

	Amortized Cost	Gross unrealized gains	Gross unrealized losses	Fair Market Value
(In thousands)				
2004				
Cash equivalents:				
Time deposits	\$ 129,918	\$ —	\$ —	\$ 129,918
Federal agency notes	17,429	—	—	17,429
Money market funds	281,000	—	—	281,000
Commercial paper	364,219	—	—	364,219
Total cash equivalents	\$ 792,566	\$ —	\$ —	\$ 792,566
Short-term investments:				
Corporate notes	\$ 2,879	\$ —	\$ (322)	\$ 2,557
Auction rate preferred stocks	274,625	—	—	274,625
Total short-term investments	\$ 277,504	\$ —	\$ (322)	\$ 277,182
Long-term investments:				
Equity investments	\$ 3,492	\$ 3,161	\$ —	\$ 6,653
Total long-term investments (included in other assets)	\$ 3,492	\$ 3,161	\$ —	\$ 6,653
Grand Total	\$ 1,073,562	\$ 3,161	\$ (322)	\$ 1,076,401
2003				
Cash equivalents:				
Time deposits	\$ 240,340	\$ —	\$ (7)	\$ 240,333
Federal agency notes	16,218	—	(36)	16,182
Money market funds	575,614	590	—	576,204
Total cash equivalents	\$ 832,172	\$ 590	\$ (43)	\$ 832,719
Short-term investments:				
Bank notes	\$ 2,728	\$ 246	\$ —	\$ 2,974
Corporate notes	8,516	—	(334)	8,182
Auction rate preferred stocks	100,774	86	—	100,860
Federal agency notes	15,474	73	—	15,547
Total short-term investments	\$ 127,492	\$ 405	\$ (334)	\$ 127,563
Long-term investments:				
Equity investments	\$ 7,765	\$ 9,080	\$ —	\$ 16,845
Total long-term investments (included in other assets)	\$ 7,765	\$ 9,080	\$ —	\$ 16,845
Grand Total	\$ 967,429	\$ 10,075	\$ (377)	\$ 977,127

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

All contractual maturities of the Company's available-for-sale marketable securities at December 26, 2004 are within one year. Actual maturities may differ from contractual maturities because issuers may have the right to call or prepay obligations without call or prepayment penalties.

[Table of Contents](#)

The Company realized net gains from the sale of available-for-sale securities of \$7.5 million in 2004, \$3.7 million in 2003 and \$5.3 million in 2002.

At December 26, 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 are included in other assets. The fair market value of these investments approximates their cost at December 26, 2004 and December 28, 2003.

On November 2, 2004, AMD Saxony prepaid the full amount outstanding under the Dresden Term Loan plus accrued and unpaid interest and a prepayment premium, and the Dresden Term Loan and related security agreements were terminated. The Company recognized a charge of approximately \$14 million (included in interest income and other, net) associated with the prepayment of the Dresden Term Loan, which included the pre-payment premium of approximately \$8.5 million and write-off of remaining capitalized financing costs of approximately \$5.3 million.

Due to our repayment of amounts outstanding under the Dresden Term Loan on November 2, 2004 and the related termination of the Dresden Loan Agreements effective December 23, 2004, we are no longer required to maintain a compensating cash balance. Therefore, as of December 26, 2004, the Company's compensating cash balance was zero as compared to \$218 million as of December 28, 2003.

Fair Value of Other Financial Instruments. The fair value of the Company's long-term debt is estimated based on the quoted market prices for the same or similar issues or on the current rates offered to the Company for debt of the same remaining maturities. The carrying amounts and estimated fair values of the Company's debt instruments are as follows:

	2004		2003	
	Carrying amount	Estimated Fair Value	Carrying amount	Estimated Fair Value
	(in thousands)			
Long-term debt and capital leases:				
Capital leases	\$ 184,853	\$ 183,406	\$ 245,958	\$ 244,641
Long-term debt (excluding capital leases)	1,674,243	2,172,113	1,846,982	1,846,982
Total long-term debt and capital leases	1,859,096	2,355,519	2,092,940	2,091,623
Less: current portion	230,828	230,855	193,266	192,725
Total long-term debt and capital leases, less current portion	\$ 1,628,268	\$ 2,124,664	\$ 1,899,674	\$ 1,898,898

The fair value of the Company's accounts receivable and accounts payable approximate carrying value based on existing payment terms.

NOTE 5: Concentrations of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash equivalents, short-term investments, trade receivables and derivative financial instruments used in hedging activities.

The Company places its cash equivalents and short-term investments with high credit quality financial institutions and, by policy, limits the amount of credit exposure with any one financial institution. The Company invests in time deposits and certificates of deposit from banks having combined capital, surplus and undistributed profits of not less than \$200 million. Investments in commercial paper and money market auction rate preferred stocks of industrial firms and financial institutions are rated AI, PI or better. Investments in tax-exempt securities, including municipal notes and bonds, are rated AA, Aa or better, and investments in repurchase agreements must have securities of the type and quality listed above as collateral.

[Table of Contents](#)

Concentrations of credit risk with respect to trade receivables are limited because a large number of geographically diverse customers make up the Company's customer base, thus spreading the trade credit risk. Accounts receivable from Fujitsu accounted for approximately 23 percent and 33 percent of total consolidated accounts receivable balance for fiscal 2004 and fiscal 2003. (See Note 3). Accounts receivable from the Company's next largest customer accounted for 16 percent and 11 percent of total consolidated accounts receivable balance for fiscal 2004 and fiscal 2003. However, the Company does not believe the receivable balance from these customers represents a credit risk based on past collection experience. The Company manages credit risk through credit approvals, credit limits and monitoring procedures. The Company performs in-depth credit evaluations of all new customers and requires letters of credit, bank or corporate guarantees or advance payments, if deemed necessary, but generally does not require collateral from its customers.

The counterparties to the agreements relating to the Company's derivative financial instruments consist of a number of large international financial institutions. The Company does not believe that there is significant risk of nonperformance by these counterparties because the Company monitors their credit ratings and limits the financial exposure and the amount of agreements entered into with any one financial institution. While the notional amounts of financial instruments are often used to express the volume of these transactions, the potential accounting loss on these transactions if all counterparties failed to perform is limited to the amounts, if any, by which the counterparties' obligations under the contracts exceed the Company's obligations to the counterparties, or approximately \$30 million, at December 26, 2004.

NOTE 6: Income Taxes

The provision (benefit) for income taxes consists of:

	2004	2003	2002
		(in thousands)	
Current:			
U.S. Federal	\$ 14,436	\$ (20,288)	\$ —
U.S. State and Local	—	—	—
Foreign National and Local	20,216	20,253	9,159
Total	34,652	(35)	9,159
Deferred:			
U.S. Federal	—	7,090	9,757
U.S. State and Local	—	—	24,602
Foreign National and Local	(28,814)	(4,119)	1,068
Total	(28,814)	2,971	35,427
Provision for income taxes	\$ 5,838	\$ 2,936	\$ 44,586

Pre-tax loss from foreign operations was \$30 million in 2004 after elimination of minority interest. Pre-tax income from foreign operations was \$120 million in 2003 after elimination of minority interest. Pre-tax loss from foreign operations was \$17 million in 2002. The current U.S. Federal provision includes \$8.6 million of income tax expense for dividends from foreign controlled corporations repatriated under the special one-time repatriation provisions of the American Jobs Creation Act of 2004.

[Table of Contents](#)

Deferred income taxes reflect the net tax effects of tax carryovers and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the balances for income tax purposes. Significant components of the Company's deferred tax assets and liabilities as of December 26, 2004 and December 28, 2003 are as follows:

	2004	2003
	(in thousands)	
Deferred tax assets:		
Net operating loss carryovers	\$ 359,352	\$ 393,076
Deferred distributor income	45,097	36,513
Inventory valuation	66,638	75,979
Accrued expenses not currently deductible	140,641	108,773
Investments	27,920	34,958
Federal and state tax credit carryovers	301,721	269,462
Other	99,135	68,949
Total deferred tax assets	1,040,504	987,710
Less: valuation allowance	(693,619)	(731,006)
	346,885	256,704
Deferred tax liabilities:		
Property, plant and equipment	(189,665)	(212,326)
Capitalized interest	(14,333)	(24,610)
Unrealized gain on investments	(10,570)	—
Unrealized gain on balance sheet translation	(90,009)	—
Unremitted foreign earnings	—	(30,400)
Other	(52,599)	(42,561)
Total deferred tax liabilities	(357,176)	(309,897)
Net deferred tax assets (liabilities)	\$ (10,291)	\$ (53,193)

As of December 26, 2004 and December 28, 2003, non-current deferred tax assets of approximately \$6 million and \$2 million, respectively, were included in Other Assets on the Company's condensed consolidated balance sheets. The change in net deferred taxes will not equal the deferred portion of the current year's provision as a result of minority interest.

In 2004, the net valuation allowance decreased by \$37 million primarily due to the utilization of net operating loss carryforwards. In 2003, the valuation allowance for deferred tax assets increased by \$164 million to continue providing a valuation allowance against all of the Company's net deferred tax assets in the United States. In 2002, the valuation allowance for deferred tax assets increased by \$542 million to provide a valuation allowance against all of the Company's net deferred tax assets. Approximately \$62 million and \$33 million of the valuation allowance for deferred tax assets as of December 26, 2004 and December 28, 2003, respectively, is for the stock option deduction arising from activity under the Company's stock option plans, the benefits of which will increase capital in excess of par value when realized.

As of December 26, 2004, the Company had federal and state net operating loss carryforwards of approximately \$930 million and \$45 million, respectively. The Company also has foreign loss carryforwards of approximately \$88 million. The Company also had federal and state tax credit carry-forwards of approximately \$246 million and \$86 million, respectively. The net operating loss and tax credit carry-forwards will expire at various dates beginning in 2005 through 2024, if not utilized.

[Table of Contents](#)

The table below displays reconciliation between statutory federal income taxes and the total provision (benefit) for income taxes.

(In thousands except percent)	Tax	Rate
2004		
Statutory federal income tax expense	\$ 33,948	35.0%
State taxes, net of federal benefit	—	0.0%
Foreign income at other than U.S. rates	(20,689)	-21.3%
Foreign losses not benefited	22,482	23.1%
Benefit for net operating losses utilized	(38,513)	-39.7%
Tax on repatriated dividends	8,610	8.9%
Other	—	—
	<u>\$5,838</u>	<u>6.0%</u>
2003		
Statutory federal income tax expense	\$ (97,113)	-35.0%
State taxes, net of federal benefit	—	0.0%
Foreign income at other than U.S. rates	(21,579)	-7.7%
Net operating losses not currently benefited	118,464	42.7%
Other	3,164	1.1%
	<u>\$2,936</u>	<u>1.1%</u>
2002		
Statutory federal income tax expense	\$ (442,611)	-35.0%
State taxes, net of federal benefit	24,602	1.9%
Net operating losses not currently benefited	462,595	36.6%
Other	—	—
	<u>\$44,586</u>	<u>3.5%</u>

The Company has made no provision for U.S. income taxes on approximately \$500 million of cumulative undistributed earnings of certain foreign subsidiaries through December 26, 2004 because it is the Company's intention to permanently reinvest such earnings. If such earnings were distributed, the Company would accrue additional income tax expense of approximately \$104 million.

NOTE 7: Debt

Revolving Credit Facilities

AMD Revolving Credit Facility

The Company's revolving credit facility provides for a secured revolving line of credit of up to \$100 million that expires in July 2007. The Company can borrow, subject to amounts set aside by the lenders, up to 85 percent of the Company's eligible accounts receivable from OEMs and 50 percent of its eligible accounts receivable from distributors. As of December 26, 2004, no borrowings were outstanding under this revolving credit facility.

Pursuant to the terms of this revolving credit facility, the Company has to comply, among other things, with the following financial covenants if its net domestic cash (as defined in the revolving credit facility) declines below \$125 million:

- restrictions on the Company's ability to pay cash dividends on its common stock;

Table of Contents

- maintain an adjusted tangible net worth (as defined in the revolving credit facility) as follows:

<u>Measurement Date</u>	<u>Amount</u>
Last day of each fiscal quarter in 2004	(in millions) \$ 1,425
Last day of each fiscal quarter in 2005	\$ 1,850
Last day of each fiscal quarter thereafter	\$ 2,000

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

<u>Period</u>	<u>Amount</u>
Four fiscal quarters ending December 31, 2004	(in millions) \$ 950
Four fiscal quarters ending March 31, 2005 and on each fiscal quarter thereafter	\$ 1,050

As of December 26, 2004, net domestic cash, as defined, totaled \$831 million and the preceding financial covenants were not applicable. The Company's obligations under the revolving credit facility are secured by all of its 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 subsidiary of Spansion LLC, entered into a revolving credit facility agreement with certain Japanese financial institutions in the aggregate amount of 15 billion yen (approximately \$145 million as of December 26, 2004). Spansion Japan can draw under the facility until March 24, 2005.

The revolving facility consists of two tranches: tranche A, in the aggregate amount of up to nine billion yen (approximately \$87 million as of December 26, 2004), and tranche B, in the aggregate amount of up to six billion yen (approximately \$58 million as of December 26, 2004). 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. As of December 26, 2004, there were no borrowings outstanding under this facility.

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 before drawing amounts under tranche B. Borrowings must be used for working capital purposes and must be repaid no later than April 24, 2005.

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 \$579 million as of December 26, 2004) as of the last day of each fiscal quarter;
- maintain total net income plus depreciation of \$213 million as of the last day of fiscal year 2004; and
- ensure that, as of the last day of each of the third and fourth quarter of 2004, 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 120%.

[Table of Contents](#)

As of December 26, 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 December 26, 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 \$10 million as of December 26, 2004). As of December 26, 2004, the amount of accounts receivable held in the trust was approximately \$166 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 December 26, 2004 of 103.62 yen to one U.S. dollar to translate the amounts denominated in yen into U.S. dollars.

[Table of Contents](#)

Long-term Borrowings and Obligations

The Company's long-term debt and capital lease obligations for the years ended 2004 and 2003 consist of:

	2004	2003
	(in thousands)	
4.75% Debentures	\$ 500,000	\$ 500,000
4.50% Notes	201,500	402,500
7.75% Notes	600,000	—
Term loan under the Dresden Loan Agreement	—	664,056
Repurchase Obligations to Fab 36 Partners	121,931	—
July 2003 Spansion Term Loan	44,599	72,500
Spansion Japan Term Loan	127,389	167,926
Fujitsu Cash Note (see Note 3)	40,000	40,000
AMD Penang Term Loan	6,325	—
Spansion China Loan	32,499	—
Obligations under capital leases	184,853	245,958
	1,859,096	2,092,940
Less: current portion	230,828	193,266
Less: Fujitsu cash note	30,000	40,000
Long-term debt and capital lease obligations, less current portion	\$ 1,598,268	\$ 1,859,674

4.75% Convertible Senior Debentures Due 2022

On January 29, 2002, the Company issued \$500 million of its 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.

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 the Company to repurchase all or a portion of its 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 the Company to repurchase the 4.75% Debentures in the event that the Company undergoes 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 the Company's 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 the Company's 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 the Company for cash at its option at specified prices expressed as a percentage of the outstanding principal amount plus accrued and unpaid interest, provided that the Company may not redeem the 4.75% Debentures prior to February 5, 2006, unless the last reported sale price of its 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.

[Table of Contents](#)

The redemption prices for the specified periods are as follows:

Period	Price as a Percentage of Principal Amount
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%

The Company may elect to purchase or otherwise retire its 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, or by tender offer when the Company believes that market conditions are favorable to do so. Such purchases may have a material effect on the Company's liquidity, financial condition and results of operations.

4.50% Convertible Senior Notes Due 2007

On November 25, 2002, the Company issued \$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 the Company at the Company's option for cash at specified prices expressed as a percentage of the outstanding principal amount plus accrued and unpaid interest provided that the Company may not redeem the 4.50% Notes unless the last reported sale price of its 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:

Period	Price as a Percentage of Principal Amount
Beginning on December 4, 2005 through November 30, 2006	101.800%
Beginning on December 1, 2006 through November 30, 2007	100.900%
On December 1, 2007	100.000%

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 its 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 the Company to repurchase all or a portion of its 4.50% Notes in the event that the Company undergoes 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.

On October 22, 2004, the Company exchanged \$70 million of its 4.50% Notes plus accrued and unpaid interest, for 10,550,000 shares of the Company's common stock. On November 8, 2004, the Company exchanged \$60 million of its 4.50% Notes for 8,748,612 shares of the Company's common stock. On November 18, 2004, the Company exchanged \$71 million of its 4.50% Notes for 10,092,649 shares of the Company's common stock. As a result of these transactions, the Company recognized a charge of approximately \$32 million, which represented the difference between the fair value of the shares issued in the transactions and the fair value of shares issuable pursuant to the original conversion terms of the 4.50% Notes (see Note 8).

[Table of Contents](#)

The Company may elect to purchase or otherwise retire the remainder of its 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, or by tender offer when the Company believes that market conditions are favorable to do so. Such purchases may have a material effect on its liquidity, financial condition and results of operations.

7.75% Senior Notes Due 2012

On October 29, 2004, the Company issued \$600 million of 7.75% Senior Notes due 2012 (the 7.75% Notes) in a private offering pursuant to Rule 144A and Regulation S under the Securities Act of 1933, as amended. The Company used the net proceeds from the sale of the 7.75% Notes plus existing cash to prepay the full amount outstanding under the Dresden Term Loan, including accrued and unpaid interest and a prepayment premium. See “Dresden Term Loan and Dresden Term Loan Guarantee,” below. The 7.75% Notes mature on November 1, 2012. Interest on the 7.75% Notes is payable semiannually in arrears on May 1 and November 1, beginning May 1, 2005. Prior to November 1, 2008, the Company may redeem some or all of the 7.75% Notes at a price equal to 100% of the principal amount plus accrued and unpaid interest plus a “make-whole” premium, as defined in the agreement. Thereafter, the Company may redeem the 7.75% Notes for cash at the following specified prices plus accrued and unpaid interest:

<u>Period</u>	<u>Price as Percentage of Principal Amount</u>
Beginning on November 1, 2008 through October 31, 2009	103.875%
Beginning on November 1, 2009 through October 31, 2010	101.938%
Beginning on November 1, 2010 through October 31, 2011	100.000%
On November 1, 2011	100.000%

In addition, on or prior to November 1, 2007, the Company may redeem up to 35 percent of the 7.75% Notes with the proceeds of certain sales of the Company’s equity securities at 107.75 percent of the principal amount thereof, plus accrued and unpaid interest.

Holders have the right to require the Company to repurchase all or a portion of its 7.75% Notes in the event that the Company undergoes a change of control, as defined in the indenture governing the 7.75% Notes at a repurchase price of 101% of the principal amount plus accrued and unpaid interest.

The indenture governing the 7.75% Notes contains certain covenants that limit, among other things, the Company’s ability and the ability of the Company’s restricted subsidiaries, which include all of the Company’s subsidiaries except Spansion LLC and its subsidiaries, from:

- incurring additional indebtedness;
- paying dividends and making other restricted payments;
- making certain investments, including investments in the Company’s unrestricted subsidiaries;
- creating or permitting certain liens;
- creating or permitting restrictions on the ability of the restricted subsidiaries to pay dividends or make other distributions to the Company;
- using the proceeds from sales of assets;
- entering into certain types of transactions with affiliates; and
- consolidating or merging or selling the Company’s assets as an entirety or substantially as an entirety.

Table of Contents

The Company also entered into a registration rights agreement with the initial purchasers of the 7.75% Notes, which granted the holders certain exchange and registration rights with respect to the 7.75% Notes. The Company agreed to:

- file a registration statement within 90 days after October 29, 2004 enabling holders to exchange 7.75% Notes for publicly registered notes with substantially identical terms;
- use commercially reasonable efforts to cause the registration statement to become effective within 180 days after October 29, 2004;
- use commercially reasonable efforts to effect an exchange offer of the 7.75% Notes for registered notes within 225 days after October 29, 2004; and
- file a shelf registration statement for the resale of the 7.75% Notes if the Company cannot effect the exchange offer within the time periods listed above.

If the Company does not meet these deadlines, additional interest of 0.25% per instance will be paid on the 7.75% Notes until the obligations under the registration rights agreement are fulfilled. On January 20, 2005, the Company filed a registration statement on Form S-4 in order to enable holders to exchange the outstanding 7.75% Notes for publicly registered notes with substantially identical terms.

Issuance costs incurred in connection with this transaction in the amount of approximately \$13 million will be amortized ratably over the term of the 7.75% Notes as interest expense, approximating the effective interest method.

Dresden Term Loan and Subsidy

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 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.

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.

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 as of December 26, 2004, of 0.739 euro to one U.S. dollar to translate the amounts denominated in deutsche marks 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 the Company 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

[Table of Contents](#)

Dresden Loan Agreements, as of December 26, 2004 the Company had provided \$192 million of subordinated loans and \$286 million of equity investments in AMD Saxony. These amounts have been eliminated in our consolidated financial statements.

In addition to support from the Company, the consortium of banks referred to above made available approximately \$1.0 billion in loans to AMD Saxony to help fund Fab 30 project costs. The loans have been fully drawn. On November 2, 2004, AMD Saxony prepaid the full amount outstanding under the Dresden Term Loans plus accrued and unpaid interest and a prepayment premium. The Dresden Loan Agreements were terminated effective December 23, 2004. The Company recognized an approximately \$14 million loss (included in interest income and other, net) associated with the prepayment of the Dresden Term Loan, which included the prepayment premium of approximately \$8.5 million and write-off of remaining capitalized financing costs of approximately \$5.3 million.

Under the Dresden Loan Agreements, AMD Saxony and its limited partners were prevented from paying dividends or making other payments to us. In addition, the Dresden Loan Agreements, as amended, also required that the Company:

- 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;
- 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 \$151 million or more than \$406 million, until the bank loans are repaid in full.

Due to the full repayment of the outstanding amount under the Dresden Term Loan on November 2, 2004 and the termination of the Dresden Loan Agreements effective December 23, 2004, the above restrictions were no longer effective as of December 26, 2004.

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 the amount outstanding under the Dresden Term Loan, which was zero as of December 26, 2004;
- capital investment grants and allowances totaling approximately \$493 million as of December 26, 2004; and
- interest subsidies totaling \$208 million as of December 26, 2004.

Of these amounts, AMD Saxony received approximately \$411 million in capital investment grants and allowances and \$153 million in interest subsidies through December 26, 2004. AMD Saxony also received \$58 million in research and development subsidies through December 26, 2004. Amounts received under the Subsidy Agreement are recorded as a long-term liability on the Company's financial statements and are amortized to operations ratably over the contractual life of the Subsidy Agreement as a reduction to operating expenses. As of December 26, 2004, these amounts were being amortized ratably through December 2007. AMD Saxony has received substantially all investment grants and allowances and interest subsidies to which it is entitled. 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.

Under the original Subsidy Agreement, AMD Saxony undertook to attain a certain employee headcount by December 2003 and to maintain such headcount until December 2008. In April 2004, the German governmental

[Table of Contents](#)

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, the Company adjusted the quarterly amortization of the grants and allowances until December 2007.

In December 2002, AMD Saxony reduced its anticipated employment levels as a result of the 2002 Restructuring Plan. Consequently, as of December 26, 2004, 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. Although the maximum amount of capital investment grants and allowances available under the Subsidy Agreement was reduced from \$563 million to approximately \$493 million, this reduction did not result in a repayment of capital investment grants and allowances already received. The Company adjusted the quarterly amortization of these amounts accordingly.

Sächsische Aufbaubank GmbH, (the SAB) an entity acting on behalf of the Free State of Saxony, requested that AMD Saxony exchange investment grants that it had previously received in the amount of approximately \$101 million for an equivalent amount of investment allowances. AMD Saxony has agreed to repay these investment grants in 2005. AMD Saxony will receive the corresponding amount of investment allowances from the German tax authorities. There is no right of setoff between these two amounts because investment grants are co-financed by the State of Saxony and the Federal Republic of Germany whereas investment allowances are financed only by the Federal Republic of Germany. Accordingly, as of December 26, 2004, the Company recorded a receivable for the investment allowances and a payable in a corresponding amount for the investment grants. The receivable and payable are included in prepaid expenses and other current assets and accrued liabilities on the consolidated balance sheets. The Company believes that the exchange will not have an impact on its operating results and cash flows.

Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements

The Company is facilitating its new 300-millimeter wafer fabrication facility, Fab 36, in Dresden, Germany, which is located adjacent to Fab 30. Fab 36 is owned by a German limited partnership named AMD Fab 36 Limited Liability Company & Co. KG, or AMD Fab 36 KG. The Company controls 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. Accordingly, AMD Fab 36 KG is an indirect consolidated subsidiary of the Company. The Company expects that Fab 36 will produce future generations of its 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. Leipziger Messe and Fab 36 Beteiligungs are limited partners in AMD Fab 36 KG. The Company also anticipates receiving up to approximately \$735 million in grants and allowances from federal and state German authorities for the Fab 36 project. The Company expects that capital expenditures for Fab 36 through 2007 will be approximately \$2.5 billion in the aggregate.

The funding to construct and facilitate Fab 36 consists of:

- Equity contributions from the Company of \$792 million under the partnership agreements, revolving loans from the Company of up to approximately \$1.0 billion, a guarantee from the Company for amounts owed by AMD Fab 36 KG and its affiliates to the lenders and unaffiliated partners;
- investments of up to approximately \$433 million from Leipziger Messe and Fab 36 Beteiligungs;
- loans of up to approximately \$947 million from a consortium of banks;
- up to approximately \$735 million of subsidies consisting of grants and allowances, from the Federal Republic of Germany and the State of Saxony; and

Table of Contents

- a loan guarantee from the Federal Republic of Germany and the State of Saxony of 80 percent of the losses sustained by the lenders referenced above after foreclosure on all other security.

As of December 26, 2004, the Company had contributed \$248 million of equity in AMD Fab 36 KG and no loans were outstanding. These amounts have been eliminated in its consolidated financial statements.

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 and Fab 36 Beteiligungs, relating to the rights and obligations with respect to their limited partner and silent partner contributions in AMD Fab 36 KG. The partnership has been 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 following the year during which the notice is given. However, other than for good cause, a partner's termination will not be effective before December 31, 2015.

Also 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 operate Fab 36. The consortium of banks agreed to make available up to \$947 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 \$1.4 billion. The Company currently anticipates that AMD Fab 36 KG will attain these milestones and first be able to draw on the loans in 2006. The amounts borrowed under the Fab 36 Loan Agreements are repayable in quarterly installments commencing in September 2007 and terminating in March 2011.

AMD Fab 36 KG pledged substantially all of its current and future assets as security under the Fab 36 Loan Agreements, the Company pledged its equity interest in AMD Fab 36 Holding and AMD Fab 36 LLC, AMD Fab 36 Holding pledged its equity interest in AMD Fab 36 Admin and its partnership interest in AMD Fab 36 KG and AMD Fab 36 Admin and AMD Fab 36 LLC pledged all of their partnership interests in AMD Fab 36 KG. AMD guaranteed the obligations of AMD Fab 36 KG to the lenders under the Fab 36 Loan Agreements. (See Note 12). AMD also guaranteed 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 state German authorities. 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's 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:

Amount (in thousands)	if Moody's Rating is at least		if Standard & Poor's Rating is at least
\$500,000	B1 or lower	and	B+ or lower
425,000	Ba3	and	BB-
400,000	Ba2	and	BB
350,000	Ba1	and	BB+
300,000	Baa3 or better	and	BBB-or better

Table of Contents

As of December 26, 2004, group consolidated cash was greater than \$500 million, and therefore, the preceding financial covenants were not applicable.

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 \$792 million, Leipziger Messe agreed to provide an aggregate of \$271 million and Fab 36 Beteiligungs agreed to provide an aggregate of \$162 million. The capital contributions of Leipziger Messe and Fab 36 Beteiligungs are comprised of limited partnership contributions and silent partnership contributions. These 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 limited partners will receive a guaranteed rate of return of between 11 percent and 13 percent per annum on 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 36 Admin have a call option over the limited partnership interests held by Leipziger Messe and Fab 36 Beteiligungs, 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 \$4.7 million to Leipziger Messe and a premium of \$2.8 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 interest of Leipziger Messe's and Fab 36 Beteiligungs' contributions over time. Specifically, AMD Fab 36 Holding and AMD Fab 36 Admin are required to repurchase Leipziger Messe's silent partnership interest of \$108 million in annual 25 percent installments commencing one year after Leipziger Messe has completed its limited partnership and silent partnership contributions, and Fab 36 Beteiligungs' silent partnership interest of \$81 million in annual 20 percent installments commencing in October 2005.

For accounting and financial reporting purposes under U.S. generally accepted accounting principles, the Company classified the silent partnership contributions as debt, based on their fair value because of the mandatory redemption features described in the prior paragraph. Each accounting period, the Company increases the carrying value of this debt towards its ultimate redemption value of the silent partnership contributions by the guaranteed annual rate of return of between 11 percent to 13 percent. The Company is classifying this periodic accretion to redemption value as interest expense.

The limited partnership contributions that AMD Fab 36 KG expects to receive from Leipziger Messe and Fab 36 Beteiligungs 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 initially recorded these contributions as minority interest, based on their fair value. Each accounting period, the Company increases the carrying value of this

[Table of Contents](#)

minority interest toward its ultimate redemption value of these contributions by the guaranteed rate of return of between 11 percent and 13 percent. The Company is classifying this periodic accretion of redemption value as an additional minority interest allocation. No separate accounting is required for the put and call options because they are not freestanding instruments and not considered derivatives under SFAS 133, "Accounting for Derivative Instruments and Hedging Activities."

As of December 26, 2004, AMD Fab 36 KG received \$122 million of silent partnership contributions and \$128 million of limited partnership contributions from the unaffiliated limited partners. These contributions were recorded as debt and minority interest, respectively, in the accompanying consolidated balance sheet.

In addition to support from the Company 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 in the form of:

- a loan guarantee equal to 80 percent of the losses sustained by the lenders after foreclosure on all other security; and
- subsidies consisting of grants and allowances totaling up to approximately \$735 million.

As of December 26, 2004, AMD Fab 36 KG received cash allowances of \$5 million for investments made in 2003 and cash grants of \$25 million for investments made in 2003 and 2004.

The Fab 36 Loan Agreements also require that the Company:

- provides 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
- guarantees 100 percent of AMD Fab 36 KG's obligations under the Fab 36 Loan Agreements until the bank loans are repaid in full.

Under the Fab 36 Loan Agreements, AMD Fab 36 KG, AMD Fab 36 Holding and AMD Fab 36 Admin are generally prevented from paying dividends or making other payments to the Company. In addition, 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:

- 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;
- failure to pay any amount due under the Fab 36 Loan Agreements within five days of the due date;
- 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;
- 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

[Table of Contents](#)

- 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 or AMD Fab 36 KG 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 could result in a cross-default under our loan agreements, including the indentures governing the Company's 4.75% Debentures, 4.50% Notes and 7.75% Notes. The Company cannot assure that it would be able to obtain the funds necessary to fulfill these obligations. Any such failure would have a material adverse effect on the Company.

Generally, the amounts under the Fab 36 Loan Agreements and the partnership agreements are denominated in euros. However, the Company reports these amounts in U.S. dollars, which are subject to change based on applicable exchange rates. The Company used the exchange rate at December 26, 2004, of 0.739 euro to one U.S. dollar, to translate the amounts denominated in euros into U.S. dollars. However, with respect to amounts for limited partnership and other equity contributions, investment grants, allowances and subsidies received by AMD Fab 36 KG through December 26, 2004, the Company used historical exchange rates that were in effect at the time AMD Fab 36 KG received these amounts to convert amounts denominated in euros into U.S. dollars.

July 2003 Spansion Term Loan and Guarantee

Under the July 2003 Spansion Term Loan, as amended, amounts borrowed bear interest at a variable rate of LIBOR plus four percent, which was 5.98 percent at December 26, 2004. Repayment occurs in equal, consecutive, quarterly principal and interest installments ending in September 2006. As of December 26, 2004, \$45 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 granted a security interest in certain property, plant and equipment as security under the July 2003 Spansion Term Loan. In addition, as security for its guarantee obligations, the Company granted a security interest in certain of its assets, including its accounts receivable, inventory, general intangibles (excluding intellectual property) and the related proceeds.

Pursuant to the terms of the July 2003 Spansion Term Loan, Spansion LLC is required to comply with the following financial covenants during an enhanced covenant period, which occurs if either Spansion LLC's net domestic cash balance (as defined in the July 2003 Spansion Term Loan) as of the last day of any fiscal quarter is below \$60 million or if its net worldwide cash balance (as defined in the July 2003 Spansion Term Loan) as of the last day of any fiscal quarter is below \$130 million:

- 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> (in millions)
For the four quarters ending December 2004	\$ 550
For the four quarters ending in 2005	\$ 640
For the four quarters ending in 2006	\$ 800

- 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 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

[Table of Contents](#)

In addition, during an enhanced covenant period, Spansion LLC is restricted in its ability to pay cash dividends to the Company or Fujitsu.

As of December 26, 2004, Spansion LLC's net domestic cash balance was \$119 million and its net worldwide cash balance was \$196 million. Because Spansion LLC was not in an enhanced covenant period, the preceding financial covenants were not applicable.

Spansion Japan Term Loan and Guarantee

As a result of the formation of Spansion LLC (see Note 3), 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 0.98 percent as of December 26, 2004. Repayment occurs in equal, consecutive, quarterly principal installments ending in June 2007. As of December 26, 2004, \$127 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. The Company agreed to reimburse Fujitsu 60 percent of any amount paid by Fujitsu under its guarantee of this loan. Pursuant to the terms of the Spansion Japan Term Loan, 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 (approximately \$579 million based on the exchange rate as of December 26, 2004);
- maintain total net income plus depreciation, as of the last day of each fiscal period, as follows:

<u>Period</u>	<u>Amount</u> (in millions)
Fiscal year 2004	\$ 221
Fiscal year 2005	\$ 204
Fiscal year 2006	\$ 188

- 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>
Third and fourth fiscal quarters of 2004	120%
Fiscal year 2005	120%
Fiscal year 2006	120%

As of December 26, 2004, Spansion Japan was in compliance with these financial covenants.

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. The Company used the exchange rate as of December 26, 2004 of 103.62 yen to one U.S. dollar to translate the amounts denominated in yen into U.S. dollars.

[Table of Contents](#)

AMD Penang Term Loan

On January 29, 2004, the Company's 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 December 26, 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 December 26, 2004 was approximately \$6 million.

Spansion China Loan

During the second quarter of 2004, Spansion (China) Limited, a subsidiary of Spansion LLC, 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 December 26, 2004). The interest rate on the U.S. 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 December 26, 2004, Spansion China had fully drawn on the loans.

Capital Lease and Sale Leaseback Transactions

On July 16, 2003, Spansion Japan entered into a sale-leaseback transaction for certain equipment with a third-party financial institution in the amount of 12 billion yen (approximately \$100 million on July 16, 2003) of cash proceeds. Upon execution of the agreement, the equipment had a net book value of approximately \$168 million. As the term on the leaseback transaction was more than 75 percent of the remaining estimated economic lives of the equipment, the Company is accounting for the transaction as a capital lease. The Company recognized an immediate loss of \$16 million on the transaction due to the fact that the estimated fair market value of the equipment was less than its net book value at the time of the transaction. The Company also recorded a deferred loss of approximately \$52 million, which is being amortized over the term of the lease in proportion to the amortization of the underlying leased assets. The Company guaranteed 50 percent of the outstanding obligations under the lease arrangement (see Note 12). As of December 26, 2004, the outstanding lease obligation under this agreement was approximately \$60 million. In addition, Spansion LLC and its subsidiaries also entered into other capital lease and leaseback transactions. These transactions did not result in significant gain or loss. Accordingly, as of December 26, 2004, Spansion LLC had aggregate outstanding capital lease obligations of approximately \$184 million. Obligations under these lease agreements are collateralized by the assets leased and are payable through 2007. Leased assets consist principally of machinery and equipment. The Company has guaranteed approximately \$87 million of Spansion LLC's aggregate outstanding capital lease obligations as of December 26, 2004 (see Note 12).

The gross amount of assets recorded under capital leases totaled approximately \$361 million and \$335 million as of December 26, 2004 and December 28, 2003, and are included in the related property, plant and equipment category. Amortization of assets recorded under capital leases is included in depreciation expense. Accumulated amortization of these leased assets was approximately \$158 million and \$83 million as of December 26, 2004 and December 28, 2003.

[Table of Contents](#)

For each of the next five years and beyond, the Company's debt and capital lease payment obligations are:

	Long-term debt (Principal only)	Capital leases (in thousands)	Total
2005	\$ 134,081	\$ 103,205	\$ 237,286
2006	121,362	84,698	206,060
2007	264,183	4,861	269,044
2008	27,941	212	28,153
2009	26,676	—	26,676
Beyond 2010	1,100,000	—	1,100,000
Total	1,674,243	192,976	1,867,219
Less: amount representing interest	—	8,123	8,123
Total at present value	\$ 1,674,243	\$ 184,853	\$ 1,859,096

NOTE 8: Interest Income and Other, Net & Interest Expense

Interest Income and Other, Net

	2004	2003 (in thousands)	2002
Interest income	\$ 18,013	\$ 19,702	\$ 35,390
Other income (loss), net	(49,163)	1,414	(3,258)
	\$(31,150)	\$21,116	\$32,132

Other income (loss), net in 2004 included a charge of approximately \$32 million related to a series of transactions pursuant to which the Company exchanged \$201 million of its 4.50% Notes for its common stock. The charge represented the difference between the fair value of the common stock issued in the transactions and the fair value of the common stock issuable pursuant to the original conversion terms of the 4.50% Notes. In addition, other income (loss), net in 2004 included a charge of approximately \$14 million in connection with the prepayment of the Dresden Term Loan. Other income (loss), net, in 2004 also included a loss of approximately \$6 million during the second quarter of 2004 as a result of the mark-to-market of certain of 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. In addition, other income (loss), net, in 2004 included a gain of \$7.5 million from sale of available-for-sale investments, compared to a gain of \$3.7 million in 2003.

Other income (loss), net, in 2003 included a gain of approximately \$6 million resulting from the partial sale of assets in connection with the formation of Spansion LLC (see Note 3), and \$2.3 million in charges for other-than-temporary declines in the Company's equity investments as compared to \$4.7 million in 2002.

Interest Expense

	2004	2003 (in thousands)	2002
Total interest charges	\$ 121,726	\$ 111,433	\$ 82,060
Less: interest capitalized	(9,398)	(1,473)	(10,711)
Interest expense	\$ 112,328	\$ 109,960	\$ 71,349

In 2004 and 2003, interest expense consisted primarily of interest incurred under the Dresden Loan Agreements, interest on the Company's 4.75% Debentures issued in January 2002 and 4.50% Notes issued in

[Table of Contents](#)

November 2002, interest on the July 2003 Spansion Term Loan and interest on other Spansion LLC's long-term debt and capital lease obligations. In 2002, interest expense consisted primarily of interest incurred under the Dresden Loan Agreements and interest on the Company's 4.75% Debentures issued in January 2002. The Company also capitalized interest during 2004 of \$9 million in connection with its Fab 36 construction activities in Dresden, Germany.

NOTE 9: Segment Reporting

Management reviews and assesses operating performance using segment revenues 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, during the third quarter of 2003, the Company re-evaluated its reportable segments under SFAS 131.

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 Flash memory products. In addition, in the fourth quarter of 2004, the Company began presenting its Personal Connectivity Solutions operating segment as a separate reportable segment because the operating loss from this operating segment exceeded 10 percent of the combined profit of all its operating segments, and therefore this operating segment became a reportable segment under the requirements of Statement of Financial Standards 131, "Segment Reporting." Previously, the Company included the Personal Connectivity Solutions operating segment in its All Other category. The Personal Connectivity Solutions segment includes primarily low power, high performance x86 and MIPS architecture-based embedded microprocessors. In addition to these three reportable segments, the Company also has the All Other category, which is not a reportable segment and includes certain operating expenses and credits that are not allocated to the operating segments. All other revenues in 2003 and 2002 were derived from foundry services which were discontinued in 2002.

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 did not include the consolidation of Spansion LLC's operations. Accordingly, the segment operating information for the Memory Products segment for the year ended December 26, 2004 is not comparable to the reclassified segment information for the prior periods presented.

[Table of Contents](#)

The following table is a summary of operating income (loss) by segment and category for 2004, 2003 and 2002.

	2004	2003	2002
	(in thousands)		
Computation Products			
Net sales	\$2,527,674	\$1,959,759	\$ 1,756,016
Operating income (loss)	302,798	(23,194)	(660,596)
Memory Products			
Net sales	2,342,542	1,418,948	740,895
Operating income (loss)	34,906	(189,552)	(159,585)
Personal Connectivity Solutions Products			
Net sales	131,219	140,359	165,953
Operating income (loss)	(71,632)	(14,283)	(25,453)
All Other			
Net sales	—	102	34,165
Operating income (loss)	(44,263)	(6,355)	(379,752)
Total			
Net sales	5,001,435	3,519,168	2,697,029
Operating income (loss)	221,809	(233,384)	(1,225,386)
Interest income and other, net	(31,150)	21,116	32,132
Interest expense	(112,328)	(109,960)	(71,349)
Minority interest in loss of subsidiary	18,663	44,761	—
Provision for income taxes	5,838	2,936	44,586
Equity in net income of Manufacturing Joint Venture	—	5,913	6,177
Net income (loss)	\$ 91,156	\$ (274,490)	\$ (1,303,012)

The Company does not discretely allocate assets to its operating segments, nor does management evaluate operating segments using discrete asset information.

The Company's operations outside the United States include both manufacturing and sales activities. The Company's manufacturing subsidiaries are located in Germany, Japan, Malaysia, Thailand, Singapore and China. Its sales subsidiaries are located in Europe, Asia and Latin America.

Table of Contents

The following table summarizes sales for each of the three years ended December 26, 2004 and long-lived assets by geographic areas as of the two years ended December 26, 2004:

	2004	2003	2002
	(in thousands)		
Sales to external customers:			
United States ⁽¹⁾	\$ 1,037,924	\$ 720,679	\$ 736,566
Japan	1,084,465	575,479	251,673
Korea	167,130	316,893	339,740
China	464,373	— ⁽²⁾	— ⁽²⁾
Europe	1,312,613	1,179,474	945,836
Other Countries	934,930	726,643	423,214
	\$ 5,001,435	\$ 3,519,168	\$2,697,029
Long-lived assets:			
United States	\$ 982,191	\$ 1,045,194	
Germany	1,983,032	1,530,687	
Japan	882,109	974,473	
Other Countries	386,475	298,138	
	\$4,233,807	\$3,848,492	

⁽¹⁾ Includes an insignificant amount of sales in Canada.

⁽²⁾ Breakdown was not available in 2002 and 2003. Sales to China in 2002 and 2003 were included in sales to Other Countries.

Sales to external customers are based on the customer's billing location. Long-lived assets are those assets used in each geographic area.

The Company markets and sells its products primarily to a broad base of customers comprising distributors and OEMs of computer and communications equipment. In 2004, gross sales to one of the Company's distributors was approximately \$631 million, which accounted for approximately 13 percent of the Company's consolidated gross sales. The revenue from this customer was primarily attributable to the Computation Products segment. In 2004, gross sales to Fujitsu were approximately \$1.1 billion, which accounted for approximately 22 percent of the Company's consolidated gross sales. The revenue from Fujitsu was primarily attributable to the Memory Products segment, although Fujitsu is also an OEM customer with respect to the Company's Computation Products segment. In 2003, gross sales to one of the Company's distributors was approximately \$458 million, which accounted for approximately 13 percent of the Company's consolidated gross sales. The revenue from this customer was primarily attributable to the Computation Products segment. In 2003, gross sales to Fujitsu were approximately \$449 million, which accounted for approximately 13 percent of the Company's consolidated gross sales. The revenue from Fujitsu was primarily attributable to the Memory Products segment, although Fujitsu is also an OEM customer with respect to the Company's Computation Products segment. No distributor accounted for ten percent or more of consolidated gross sales in 2002. Other than Fujitsu who is both an OEM and distributor customer, no OEM customer accounted for more than ten percent of consolidated gross sales in 2003 and 2002.

NOTE 10: Stock-Based Incentive Compensation Plans

Equity Incentive Program Description. The Company's stock option programs are intended to attract, retain and motivate highly qualified employees. On April 29, 2004, the Company's stockholders approved the 2004 Equity Incentive Plan (the 2004 Plan), which had previously been approved by its Board of Directors. Stock options available for grant under the Company's equity compensation plans that were in effect before April 29, 2004, (the Prior Plans), including those that were not approved by the Company's stockholders, were consolidated into the 2004 Plan. As of April 29, 2004, equity awards are made only from the 2004 Plan. Under

[Table of Contents](#)

the Company's Prior Plans key employees generally were, and under the 2004 Plan key employees generally are, granted nonqualified stock options (NSOs) to purchase its 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. Any incentive stock options (ISOs) granted under the Prior Plans or the 2004 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. Under the 2004 Plan, the Company has also granted awards of restricted stock. The purchase price for an award of restricted stock is \$0.01 per share. Restricted stock can be granted to any employee or consultant. Restricted stock that vests based on continued service does not fully vest for three years from the date of grant. Restricted stock that vests based on performance does not vest for at least one year from the date of grant.

On June 27, 2003, the Company filed a Tender Offer Statement with the SEC and made an offer, which was approved by the Company's stockholders to exchange certain stock options to purchase shares of common stock outstanding under eligible option plans and held by eligible employees, for replacement options to be granted no sooner than six months and one day from the cancellation of the surrendered options. The offer to exchange expired on July 25, 2003. Options to purchase approximately 19 million shares of the Company's common stock were tendered for exchange and cancelled on July 28, 2003. On January 30, 2004, the Company granted options to purchase approximately 12 million shares of the Company's common stock at an exercise prices which represented the closing price of the Company's common stock on that date, in exchange for options cancelled. The Company did not record compensation expense as a result of the exchange.

The following table summarizes stock option activity and related information for the fiscal years presented:

	2004		2003		2002	
	Number of shares	Weighted-average exercise price	Number of shares	Weighted-average exercise price	Number of shares	Weighted-average exercise price
	(Shares in thousands)					
Options:						
Outstanding at beginning of year	40,969	\$ 12.92	60,408	\$ 18.58	52,943	\$ 20.44
Granted	26,121	14.54	5,575	9.46	11,829	5.62
Canceled	(3,425)	23.20	(22,642)	27.69	(3,413)	20.34
Exercised	(9,981)	10.08	(2,372)	7.86	(951)	6.23
Outstanding at end of year	53,684	\$ 13.58	40,969	\$ 12.92	60,408	\$ 18.58
Exercisable at end of year	32,250	\$ 13.72	28,624	\$ 13.66	33,807	\$ 19.55
Available for grant at beginning of year	29,613		13,019		21,146	
Available for grant at end of year	23,901		29,613		13,019	

[Table of Contents](#)

The following table summarizes information about options outstanding as of December 26, 2004:

Range of exercise prices	Options outstanding			Options exercisable	
	Number of shares	Weighted-average remaining contractual life (years)	Weighted-average exercise price	Number of shares	Weighted-average exercise price
			(Shares in thousands)		
\$ 0.01 – \$ 9.56	14,609	5.41	\$ 7.57	11,511	\$ 7.73
\$ 9.57 – \$ 14.64	15,842	7.21	12.88	6,153	12.47
\$14.65 – \$ 15.50	14,653	6.50	14.98	8,063	14.87
\$15.55 – \$ 45.50	8,580	6.03	22.69	6,523	24.03
\$ 0.01 – \$ 45.50	53,684	6.34	\$ 13.58	32,250	\$ 13.72

Stock Purchase Plan. The Company has an employee stock purchase plan (ESPP) that allows eligible and participating employees to purchase, through payroll deductions, shares of the Company's common stock at 85 percent of the lower of the fair market value on the first or the last business day of the three-month offering period. As of December 26, 2004, 4,603,182 common shares remained available for issuance under the plan. A summary of stock purchased under the plan for the specified fiscal years is shown below:

	2004	2003	2002
	(in thousands)		
Aggregate purchase price	\$24,345	\$17,060	\$23,488
Shares purchased	2,151	3,414	3,177

The weighted-average fair value of rights granted under the Company's ESPP during 2004, 2003 and 2002 were \$2.66, \$4.86 and \$2.26 per share.

Restricted Stock Awards. In 1998, the Company adopted the 1998 Stock Incentive Plan under which the Company was authorized to issue two million shares of common stock to employees who are not covered by Section 16 of the Securities Exchange Act of 1934, as amended, subject to terms and conditions determined at the discretion of the Company's Board of Directors. As of December 26, 2004, the Company canceled agreements covering 48,291 shares without issuance and the Company had issued 370,524 shares pursuant to prior agreements. As of December 26, 2004, there are no awards outstanding and no shares available for future grants. Activity under this plan is included in the accompanying tables summarizing activity under the Company's employee stock plans.

Under its 2004 Plan, the Company is authorized to issue nine million shares of common stock to employees as restricted stock or as stock options with an exercise price of no less than 85% of fair market value on the date of grant. As of December 26, 2004, the Company issued 43,000 shares of restricted stock under this plan. Compensation expense recognized for these shares is not significant.

Shares Reserved for Issuance. The Company had a total of approximately 28,504,077 shares of common stock reserved as of December 26, 2004 for issuance under employee stock option plans and the ESPP, including restricted stock awards.

Stock-Based Compensation—Pro Forma Disclosures. For pro forma disclosure purposes only, the Company estimates the fair value of its stock-based awards to employees using a Black-Scholes option pricing model. The Black-Scholes model was developed for use in estimating fair value of traded options that have no vesting restrictions and are fully transferable. In addition, the Black-Scholes model requires the input of highly subjective assumptions including expected stock price volatility. Because our stock-based awards to employees have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models

[Table of Contents](#)

may not provide a reliable single measure of the fair value of our stock-based awards to employees. The fair value of our stock-based awards to employees was estimated assuming no expected dividends and the following weighted-average assumptions:

	Options				ESPP	
	2004	2003	2002	2004	2003	2002
Expected life (years)	3.68	3.27	3.17	0.25	0.25	0.25
Expected stock price volatility	78.33%	82.91%	84.68%	45.21%	63.66%	99.00%
Risk-free interest rate	2.74%	1.99%	2.93%	1.69%	1.49%	1.87%

The Company granted a total of 25,999,480 stock-based awards during 2004 with exercise prices equal to the closing price of its common stock on the grant date. The weighted-average exercise price and weighted-average fair value of these awards were \$14.56 and \$8.20. The Company granted a total of 80,265 stock-based awards during 2004 with exercise prices greater than the closing price of its common stock on the grant date. The weighted-average exercise price and weighted-average fair value of these awards were \$14.54 and \$6.34. The Company granted 41,000 stock-based awards in 2004 at less than the closing price of its common stock on the grant date, excluding 43,000 shares of restricted stock granted in 2004 at less than closing price of its common stock on the grant date. The weighted-average exercise price and weighted-average fair value of these awards were \$1.39 and \$13.61.

The Company granted a total of 5,566,484 stock-based awards during 2003 with exercise prices equal to the closing price of its common stock on the grant date. The weighted-average exercise price and weighted-average fair value of these awards were \$9.46 and \$5.67. The Company granted a total of 8,745 stock-based awards during 2003 with exercise prices greater than the closing price of its common stock on the grant date. The weighted-average exercise price and weighted-average fair value of these awards were \$9.54 and \$4.05. The Company did not grant stock-based awards during 2003 with exercise prices less than the closing price of its common stock on the grant date.

The Company granted a total of 11,527,551 stock-based awards during 2002 with exercise prices equal to the closing price of its common stock on the grant date. The weighted-average exercise price and weighted-average fair value of these awards were \$9.86 and \$5.48. The Company granted a total of 114,980 stock-based awards during 2002 with exercise prices greater than the closing price of its common stock on the grant date. The weighted-average exercise price and weighted-average fair value of these awards were \$12.73 and \$5.89. The Company granted a total of 186,157 stock-based awards during 2002 with exercise prices less than the closing price of its common stock on the grant date. The weighted-average exercise price and weighted-average fair value of these awards were \$0.08 and \$13.70.

NOTE 11: Other Employee Benefit Plans

Profit Sharing Program. The Company has a profit sharing program to which the Board of Directors may authorize quarterly contributions. All employees who have worked with the Company for three months or more are eligible to participate in this program. Profit sharing expense was approximately \$14 million in 2004 and \$4 million in 2003. There was no profit sharing expense in 2002.

Retirement Savings Plan. The Company has a retirement savings plan, commonly known as a 401(k) plan, that allows participating employees in the United States to contribute up to 100 percent of their pre-tax salary subject to Internal Revenue Service limits. The Company matches employee contributions at a rate of 50 cents on each dollar of the first six percent of participants' contributions, to a maximum of three percent of eligible compensation. The Company's contributions to the 401(k) plan were approximately \$12 million in 2004, \$10 million in 2003 and \$14 million in 2002.

NOTE 12: Commitments and Guarantees

The Company leases certain of its facilities, as well as the underlying land in certain jurisdictions, under agreements that expire at various dates through 2032. The Company also leases certain of its manufacturing and office equipment for terms ranging from one to five years. Rent expense was approximately \$63 million, \$53 million and \$65 million in 2004, 2003 and 2002, respectively.

For each of the next five years and beyond, noncancelable long-term operating lease obligations, including facilities vacated in connection with restructuring activities, and unconditional commitments to construct the 300-millimeter wafer fabrication facility and purchase manufacturing supplies and services are as follows:

	Operating leases	Purchase commitments
	(in thousands)	
2005	\$ 76,865	\$ 281,662
2006	63,812	205,951
2007	51,007	209,301
2008	44,547	183,774
2009	39,071	43,074
Beyond 2009	155,552	357,438
	\$ 430,854	\$ 1,281,200

The previous operating lease for the Company's corporate marketing, general and administrative facility in Sunnyvale, California expired in December 1998, at which time the Company arranged for the sale of the facility to a third party and leased it back under a new operating lease. The Company deferred the gain (\$37 million) on the sale and is amortizing it over a period of 20 years, the life of the lease. The lease expires in December 2018. At the beginning of the fourth lease year and every three years thereafter, the rent will be adjusted by 200 percent of the cumulative increase in the consumer price index over the prior three-year period, up to a maximum of 6.9 percent. Certain other operating leases contain provisions for escalating lease payments subject to changes in the consumer price index. Total future lease obligations as of December 26, 2004, were approximately \$431 million, of which \$106 million was recorded as a liability for certain facilities that were included in our 2002 Restructuring Plan. (See Note 14.)

The Company, in the normal course of business, entered into purchase commitments for manufacturing supplies and services. Total non-cancelable purchase commitments as of December 26, 2004, were approximately \$1.3 billion for periods through 2020. These purchase commitments include approximately \$546 million related to contractual obligations to purchase energy and gas for Fab 30 and Fab 36 and \$250 million representing future payments to IBM pursuant to the joint development agreement. As IBM's services are being performed ratably over the life of the agreement, the Company expenses the payments as incurred. The Company's non-cancelable purchase commitments also include approximately \$141 million to M+W Zander for the design and construction of Fab 36 and other related services. These payments will be made to M+W Zander as services are performed. In addition, unconditional purchase commitments also include approximately \$68 million for software maintenance agreements that require periodic payments through 2009. As a result, the Company has not recorded any liabilities relating to these agreements. The remaining commitments primarily consist of non-cancelable contractual obligations to purchase raw materials, natural resources and office supplies. Purchase orders for goods and services that are cancelable without significant penalties are not included in the total amount.

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."

Table of Contents

Guarantees of Indebtedness Recorded on the Company's Consolidated Balance Sheet

The following table summarizes the principal guarantees issued as of December 26, 2004 related to underlying liabilities that are already recorded on the Company's consolidated balance sheet as of December 26, 2004 and their expected expiration dates by year. No incremental liabilities are recorded on the Company's consolidated balance sheet for these guarantees:

	Amounts Guaranteed ⁽¹⁾	2005	2006	2007	2008	2009	2010 and Beyond
				(in thousands)			
July 2003 Spansion term loan guarantee (see Note 7)	\$ 26,759	\$ 16,500	\$ 10,259	\$ —	\$ —	\$ —	\$ —
Spansion Japan term loan guarantee (see Note 7)	76,433	27,794	27,794	20,845	—	—	—
Spansion capital lease guarantees	87,303	49,557	34,475	3,271	—	—	—
Repurchase Obligations to Fab 36 partners ⁽²⁾	121,931	16,242	26,422	26,422	26,422	26,423	—
Total guarantees	\$ 312,426	\$ 110,093	\$ 98,950	\$ 50,538	\$ 26,422	\$ 26,423	\$ —

⁽¹⁾ Amounts represent the principal amount of the underlying obligations guaranteed and are exclusive of obligations for interest, fees and expenses.

⁽²⁾ This is the amount of silent partnership contributions received by AMD Fab 36 KG, as of December 26, 2004 from the unaffiliated limited partners under the Fab 36 partnership agreements. Assuming certain milestones are met by AMD Fab 36 KG, the Company expects to receive a total of up to \$189 million of silent partnership contributions. AMD Fab 36 Holding and AMD Fab 36 Admin are required to repurchase each partner's silent partnership contribution in annual installments one year after the partner has contributed the full amount required under the partnership agreements. The Company guaranteed these obligations. As of December 26, 2004, Fab 36 Beteiligungs had contributed the full amount required under the partnership agreements, but Leipziger Messe had not contributed the full amount. Therefore, the condition precedent to the Company's repurchase obligations with respect to Leipziger Messe's silent partnership contribution had not been met. See "Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements," in Note 7.

Guarantees of Indebtedness not Recorded on the Company's Consolidated Balance Sheet

The following table summarizes the principal guarantees issued as of December 26, 2004 for which the related underlying liabilities are not recorded on the Company's consolidated balance sheets as of December 26, 2004 and their expected expiration dates.

	Amounts Guaranteed ⁽¹⁾	2005	2006	2007	2008	2009	2010 and Beyond
				(in thousands)			
Spansion LLC operating lease guarantees	\$ 24,414	\$ 13,267	\$ 8,069	\$ 2,052	\$ 1,026	\$ —	\$ —
AMTC revolving loan guarantee	43,308	—	—	43,308	—	—	—
AMTC rental guarantee ⁽²⁾	153,489	—	—	—	—	—	153,489
Other	5,629	1,813	3,816	—	—	—	—
Total guarantees	\$ 226,840	\$ 15,080	\$ 11,885	\$ 45,360	\$ 1,026	\$ —	\$ 153,489

⁽¹⁾ Amounts represent the principal amount of the underlying obligations guaranteed and are exclusive of obligations for interest, fees and expenses.

⁽²⁾ Amount of the guarantee diminishes as the rent is paid.

[Table of Contents](#)

Spansion LLC Operating Lease Guarantees

The Company has guaranteed certain operating leases entered into by Spansion LLC and its subsidiaries totaling approximately \$24 million as of December 26, 2004. The amounts guaranteed are reduced by the lease payments paid by Spansion LLC over the lease term. Under the provision of FIN 45, the Company has not recorded any liability in its consolidated financial statements associated with these guarantees because they are for its subsidiary's performance obligations.

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 AMD, Infineon Technologies AG and DuPont Photomasks, Inc. for the purpose of constructing and operating an advanced photomask facility in Dresden, Germany. The results of operations of AMTC, which the Company accounts for following the equity method of accounting, are immaterial to the Company's consolidated financial statements. To finance the project, BAC and AMTC entered into a \$162 million revolving credit facility and a \$102 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 December 26, 2004, the Company guaranteed up to approximately \$43 million plus interest and expenses under the revolving loan, and up to approximately \$20 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 \$153 million. As of December 26, 2004, \$80 million was drawn under the revolving credit facility, and \$78 million was drawn under the term loan. The Company has not recorded any liability in its consolidated financial statements associated with the guarantees because they were issued prior to December 31, 2002, the effective date of FIN 45.

Warranties and Indemnities

The Company offers a three-year limited warranty to end users for microprocessor products that are commonly referred to as "processors in a box" and a one-year limited warranty to direct purchasers for all other microprocessor, Flash memory and embedded processor products. Under limited circumstances, the Company may offer an extended limited warranty to direct purchasers of Flash memory products or of microprocessor products that are intended for systems targeted at the commercial and embedded end markets.

Changes in the Company's potential liability for product warranty during the years ended December 26, 2004 and December 28, 2003:

	Year Ended	
	December 26, 2004	December 28, 2003
	(in thousands)	
Balance, beginning of period	\$ 24,668	\$ 19,369
New warranties issued during the period	42,471	40,011
Settlements during the period	(16,482)	(24,560)
Changes in liability for pre-existing warranties during the period, including expirations	(28,614)	(10,152)
Balance, end of period	\$ 22,043	\$ 24,668

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

[Table of Contents](#)

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 a third party or other claims made against certain 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.

NOTE 13: Other Long-term Liabilities

The Company's other long-term liabilities at December 26, 2004 and December 28, 2003 consisted of:

	December 26, 2004	December 28, 2003
	(in thousands)	
Dresden deferred grants and subsidies (see Note 7)	\$ 274,150	\$ 262,941
Customer deposits	—	17,500
Deferred gain on sale leaseback of building (see Note 12)	21,807	23,488
Restructuring accrual (see Note 14)	86,680	98,590
Spansion LLC pension liability (see Note 3)	25,890	26,242
Other	6,099	—
	<u>\$ 414,626</u>	<u>\$ 428,761</u>

NOTE 14: 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 industry conditions resulting from weak customer demand and industry-wide excess inventory.

As part of this plan, and as a result of the Company's agreement with IBM to jointly develop future generations of the Company's microprocessor manufacturing process technology, the Company ceased microprocessor-related research and development in the Submicron Development Center (SDC) in Sunnyvale, California and eliminated most of the related resources, including the sale or abandonment of certain equipment used in the SDC.

The 2002 Restructuring Plan resulted in the consolidation of facilities, primarily at the Company's Sunnyvale, California site and at sales offices worldwide. The Company vacated, and is attempting to sublease, certain facilities currently occupied under long-term operating leases through 2011. The Company also terminated the implementation of certain partially completed enterprise resource planning (ERP) software and other information technology implementation activities, resulting in the abandonment of certain software, hardware and capitalized development costs.

Pursuant to the 2002 Restructuring Plan, the Company recorded restructuring costs and other special charges of \$330.6 million in the fourth quarter of 2002, consisting primarily of \$68.8 million of anticipated severance and fringe benefit costs, an asset impairment charge of \$32.5 million relating to a license that has no future use because of its association with discontinued microprocessor process development activities, asset impairment charges of \$30.6 million resulting from the abandonment of equipment previously used in microprocessor process development and manufacturing activities, anticipated exit costs of \$138.9 million almost wholly related to vacating and consolidating the Company's facilities and a charge of \$55.5 million resulting from the abandonment of partially completed ERP software and other information technology implementation activities.

[Table of Contents](#)

During 2003, management approved the sale of additional equipment primarily used in the SDC that was identified as no longer useful in the Company's operations. As a result, the Company recorded approximately \$11 million of asset impairment charges in the first quarter of 2003, including \$3.3 million of charges for decommission costs necessary to complete the sale of the equipment.

During 2003, the Company revised its estimates of the number of positions to be eliminated pursuant to the 2002 Restructuring Plan from 2,000 to 1,800 in response to the additional resources required due to the Spansion LLC transaction. As a result, the Company reversed \$8.9 million of the estimated severance and fringe benefit accrual. As of December 26, 2004, 1,786 employees had been terminated pursuant to the 2002 Restructuring Plan resulting in cumulative cash payments of \$60 million in severance and employee benefit costs.

During 2004, the Company adjusted the restructuring accrual related to the 2002 Restructuring Plan, which resulted in an additional \$5.2 million restructuring charge for the period. The adjustment was primarily related to a change in the Company's estimate of potential sublease opportunities associated with abandoned facilities located in Sunnyvale, California.

With the exception of the exit costs consisting primarily of remaining lease payments on abandoned facilities, net of estimated sublease income that are payable through 2011, the Company has completed the activities associated with the 2002 Restructuring Plan.

The following table summarizes activities under the 2002 Plan through December 26, 2004:

	Severance and Employee Benefits	Asset Impairment	Exit and Equipment Decommission Costs	Other Restructuring Charges	Total
			(in thousands)		
2002 provision	\$ 68,770	\$ 118,590	\$ 138,900	\$ 4,315	\$ 330,575
Non-cash charges	—	(118,590)	—	—	(118,590)
Cash charges	(14,350)	—	(795)	—	(15,145)
Accruals at December 29, 2002	\$ 54,420	\$ —	\$ 138,105	\$ 4,315	\$ 196,840
2003 Provision	—	7,791	3,314	—	11,105
Cash charges	(38,816)	—	(20,796)	(4,300)	(63,912)
Non-cash charges	—	(7,791)	—	—	(7,791)
Non-cash adjustments	(8,864)	—	—	(15)	(8,879)
Accruals at December 28, 2003	\$ 6,740	\$ —	\$ 120,623	\$ —	\$ 127,363
Cash charges	(6,789)	—	(20,150)	—	(26,939)
Non-cash adjustments	49	—	5,203	—	5,252
Accruals at December 26, 2004	\$ —	\$ —	\$ 105,676	\$ —	\$ 105,676

2001 Restructuring Plan

In 2001, in response to the continued slowdown in the semiconductor industry and a resulting decline in revenues, the Company implemented a restructuring plan (the 2001 Restructuring Plan). The Company completed its execution of the 2001 Restructuring Plan as of December 26, 2004.

During 2003, the Company reduced the estimated accrual of the facility and equipment decommission costs by \$12.2 million based on the most current information available and the Company realized a recovery of approximately \$3.9 million for the excess of the sale price over the estimated fair value of equipment that the Company determined was impaired as a result of the 2001 Restructuring Plan. Both amounts were included in restructuring and other special charges (recoveries), net.

[Table of Contents](#)

The following table summarizes activity under the 2001 Restructuring Plan from December 30, 2001 through December 26, 2004:

	Severance and Employee Benefits	Facilities and Equipment Decommission Costs	Other Facilities Exit Costs	Total
	(in thousands)			
Accruals at December 30, 2001	\$ 26,622	\$ 15,500	\$ 646	\$ 42,768
Cash charges	(26,622)	(445)	—	(27,067)
Accruals at December 29, 2002	\$ —	\$ 15,055	\$ 646	\$ 15,701
Non-cash adjustments	—	(11,574)	(646)	(12,220)
Cash charges	—	(2,485)	—	(2,485)
Accruals at December 28, 2003	\$ —	\$ 996	\$ —	\$ 996
Cash charges	—	(991)	—	(991)
Non-cash adjustments	—	(5)	—	(5)
Accruals at December 26, 2004	\$ —	\$ —	\$ —	\$ —

As of December 26, 2004 and December 28, 2003, \$87 million and \$99 million of the total restructuring accruals of \$106 million and \$128 million were included in other liabilities (long-term) on the balance sheets. (See Note 13.)

NOTE 15: Contingencies

Environmental Matters

Superfund Clean-Up Orders. The Company is named as a responsible party on Superfund clean-up orders for three sites in Sunnyvale, California that are on the National Priorities List. Since 1981, the Company has discovered hazardous material releases to the groundwater from former underground tanks and proceeded to investigate and conduct remediation at these three sites. The chemicals released into the groundwater were commonly used in the semiconductor industry in the United States in the wafer fabrication process prior to 1979.

In 1991, the Company received Final Site Clean-up Requirements Orders from the California Regional Water Quality Control Board relating to the three sites. The Company has entered into settlement agreements with other responsible parties on two of the orders. Under these agreements other parties have assumed most of the costs as well as the primary role in conducting remediation activities under the orders. The Company remains responsible for these costs in the event that the other parties do not fulfill their obligations under the settlement agreements.

To address anticipated future remediation costs under the orders, the Company has computed and recorded an estimated environmental liability of approximately \$3.7 million in accordance with applicable accounting rules and has not recorded any potential insurance recoveries in determining the estimated costs of the cleanup. The progress of future remediation efforts cannot be predicted with certainty, and these costs may change. The Company believes that the potential future liability, if any, in excess of amounts already accrued will not have a material adverse effect on the Company's financial condition or results of operations.

Other Matters

The Company is a defendant or plaintiff in various other actions, which arose in the normal course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the Company's financial condition or results of operations.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of
Advanced Micro Devices, Inc.

We have audited the accompanying consolidated balance sheets of Advanced Micro Devices, Inc. as of December 26, 2004 and December 28, 2003, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 26, 2004. Our audits also included the financial statement schedule listed in the Index at Item 15(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Advanced Micro Devices, Inc. as of December 26, 2004 and December 28, 2003, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 26, 2004, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Advanced Micro Devices, Inc.'s internal control over financial reporting as of December 26, 2004, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 21, 2005 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Jose, California
February 21, 2005

Management’s Report on Internal Control Over Financial Reporting

Internal control over financial reporting refers to the process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer, and effected by our Board of Directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, and includes those policies and procedures that:

- (1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- (2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of managements and directors of the Company; and
- (3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company’s assets that could have a material effect on the financial statements.

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk. Management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company.

Management has used the framework set forth in the report entitled “Internal Control—Integrated Framework” published by the Committee of Sponsoring Organizations of the Treadway Commission to evaluate the effectiveness of the Company’s internal control over financial reporting. Management has concluded that the Company’s internal control over financial reporting was effective as of the end of the most recent fiscal year. Ernst & Young has issued an attestation report on management’s assessment of the Company’s internal control over financial reporting, which is included immediately following this report.

Hector de. J. Ruiz

Chairman of the Board, President and Chief Executive Officer

Robert J. Rivet

Executive Vice President, Chief Financial Officer

Report of Independent Registered Public Accounting Firm on Internal Control over Financial Reporting

The Board of Directors and Stockholders of
Advanced Micro Devices, Inc.

We have audited management's assessment, included in the accompanying Management's Report on Internal Control Over Financial Reporting, that Advanced Micro Devices, Inc. maintained effective internal control over financial reporting as of December 26, 2004, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Advanced Micro Devices, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Advanced Micro Devices, Inc. maintained effective internal control over financial reporting as of December 26, 2004, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Advanced Micro Devices, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 26, 2004, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Advanced Micro Devices, Inc. as of December 26, 2004 and December 28, 2003, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 26, 2004 of Advanced Micro Devices, Inc. and our report dated February 21, 2005 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Jose, California
February 21, 2005

Supplementary Financial Information
2004 and 2003 by Quarter
(Unaudited)

	2004				2003			
	Dec. 26 ⁽¹⁾	Sep. 26 ⁽¹⁾	Jun. 27 ⁽¹⁾	Mar. 28 ⁽¹⁾	Dec. 28 ⁽¹⁾	Sep. 28 ⁽¹⁾	Jun. 29	Mar. 30
Net sales	\$ 1,263,706	\$ 1,239,459	\$ 1,261,837	\$ 1,236,433	\$ 1,205,593	\$ 953,759	\$ 645,261	\$ 714,555
Expenses:								
Cost of sales	742,650	738,026	783,069	768,840	778,506	626,880	425,085	496,592
Research and development	252,767	230,896	224,821	226,090	226,503	213,997	208,513	203,062
Marketing, general and administrative	245,622	202,179	178,993	180,217	162,807	151,111	135,161	138,228
Restructuring and other special charges	2,942	—	2,514	—	(8,039)	(8,000)	—	2,146
	1,243,981	1,171,101	1,189,397	1,175,147	1,159,777	983,988	768,759	840,028
Operating income (loss)	19,725	68,358	72,440	61,286	45,816	(30,229)	(123,498)	(125,473)
Interest and other income (expense), net	(42,430)	2,502	(2,203)	10,981	8,912	493	4,971	6,740
Interest expense	(29,070)	(25,148)	(27,956)	(30,154)	(30,943)	(26,848)	(26,364)	(25,805)
Income (loss) before income taxes, equity in net income of joint venture	(51,775)	45,712	42,281	42,113	23,785	(56,584)	(144,891)	(144,538)
Minority interest in loss of subsidiary	16,831	3,008	(6,527)	5,351	19,408	25,353	—	—
Provision (benefit) for income taxes	(4,981)	4,872	3,574	2,373	—	—	—	2,936
Income (loss) before equity in net income of joint venture	(29,963)	43,848	32,180	45,091	43,193	(31,231)	(144,891)	(147,474)
Equity in net income (loss) of joint venture	—	—	—	—	—	—	4,795	1,118
Net income (loss)	\$ (29,963)	\$ 43,848	\$ 32,180	\$ 45,091	\$ 43,193	\$ (31,231)	\$ (140,096)	\$ (146,356)
Net income (loss) per share								
Basic	(0.08)	0.12	0.09	0.13	0.12	(0.09)	(0.40)	(0.42)
Diluted	(0.08)	0.12	0.09	0.12	0.12	(0.09)	(0.40)	(0.42)
Shares used in per share calculation								
Basic	375,308	355,254	353,655	351,328	357,090	347,334	346,320	345,012
Diluted	375,308	417,576	420,053	417,963	416,190	347,334	346,320	345,012
Common stock market price range								
High	\$ 24.95	\$ 16.00	\$ 17.60	\$ 17.50	\$ 18.50	\$ 12.87	\$ 8.59	\$ 7.79
Low	\$ 12.22	\$ 10.76	\$ 13.65	\$ 13.60	\$ 10.52	\$ 6.25	\$ 5.80	\$ 4.78

⁽¹⁾ Includes consolidated Spansion LLC results and is not comparable to periods prior to the quarter ended September 28, 2003.

⁽²⁾ Includes a charge of approximately \$32 million associated with the Company's exchange of \$201 million of its 4.50% Notes for common stock and a charge of approximately \$14 million in connection with the prepayment of the Dresden Term Loan.

[Table of Contents](#)

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed with the objective of providing reasonable assurance that 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 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 December 26, 2004, the end of the period 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.

Management's Report on Internal Control Over Financial Reporting

See "Management's Report on Internal Control Over Financial Reporting" set forth on page 117 in Item 8, Financial Statements and Supplementary Data, immediately following the financial statement audit report of Ernst & Young LLP.

Changes in Internal Control Over Financial Reporting

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.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information under the captions, “Item 1—Election of Directors,” “Corporate Governance,” “Committees and Meetings of the Board of Directors,” “Executive Officers of the Registrant” and “Section 16(a) Beneficial Ownership Reporting Compliance” in our 2005 Proxy Statement is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information under the captions, “Committees and Meetings of the Board of Directors—Compensation Committee,” “Directors’ Compensation and Benefits,” “Executive Compensation,” “2004 Option Grants,” “Aggregated Option Exercises in 2004 and Fiscal Year-End Option Values,” “Long-Term Incentive Awards,” “Special Retirement Benefits,” “Employment Agreements” and “Change in Control Arrangements” in our 2005 Proxy Statement is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information under the captions, “Principal Stockholders,” “Security Ownership of Directors and Executive Officers” and “Equity Compensation Plan Information” in our 2005 Proxy Statement is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information under the caption, “Certain Relationships and Related Transactions” in our 2005 Proxy Statement is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information under the captions, “Item 2—Ratification of Independent Auditors—Independent Auditor’s Fees” in our 2005 Proxy Statement is incorporated herein by reference.

With the exception of the information specifically incorporated by reference in Part II and Part III of this Annual Report on Form 10-K from our 2005 Proxy Statement, our 2005 Proxy Statement shall not be deemed to be filed as part of this report. Without limiting the foregoing, the information under the captions, “Board Compensation Committee Report on Executive Compensation,” “Board Audit Committee Report” and “Performance Graph” in our 2005 Proxy Statement is not incorporated by reference in this Annual Report on Form 10-K.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

1. Financial Statements

The financial statements are set forth in Item 8 of this report on Form 10-K.

Other than Schedule II, Valuation and Qualifying Accounts, attached to this Form 10-K, all other schedules have been omitted because the required information is not present or is not present in amounts sufficient to require submission of the schedules or because the information required is included in the Consolidated Financial Statements or Notes thereto.

2. Exhibits

The exhibits listed in the accompanying Index to Exhibits are filed as part of, or incorporated by reference into, this Annual Report on Form 10-K. The following is a list of such Exhibits:

Exhibit Number	Description of Exhibits
2.1	Agreement and Plan of Merger dated October 20, 1995, between AMD and NexGen, Inc., filed as Exhibit 2 to AMD's Quarterly Report for the period ended October 1, 1995, and as amended as Exhibit 2.1 to AMD's Current Report on Form 8-K dated January 17, 1996, is hereby incorporated by reference.
2.2	Amendment No. 2 to the Agreement and Plan of Merger, dated January 11, 1996, between AMD and NexGen, Inc., filed as Exhibit 2.2 to AMD's Current Report on Form 8-K dated January 17, 1996, is hereby incorporated by reference.
2.3	Stock Purchase Agreement dated as of April 21, 1999, by and between Lattice Semiconductor Corporation and AMD, filed as Exhibit 2.3 to AMD's Current Report on Form 8-K dated April 26, 1999, is hereby incorporated by reference.
2.3(a)	First Amendment to Stock Purchase Agreement, dated as of June 7, 1999, between AMD and Lattice Semiconductor Corporation, filed as Exhibit 2.3(a) to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 1999, is hereby incorporated by reference.
2.3(b)	Second Amendment to Stock Purchase Agreement, dated as of June 15, 1999, between AMD and Lattice Semiconductor Corporation, filed as Exhibit 2.3(b) to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 1999, is hereby incorporated by reference.
2.4	Reorganization Agreement, dated as of May 21, 2000, by and between AMD and BoldCo, Inc., filed as Exhibit 2.1 to AMD's Current Report on Form 8-K dated May 21, 2000, is hereby incorporated by reference.
2.5	Recapitalization Agreement, dated as of May 21, 2000, by and between BraveTwo Acquisition, L.L.C., AMD and BoldCo, Inc., filed as Exhibit 2.2 to AMD's Current Report on Form 8-K dated May 21, 2000, is hereby incorporated by reference.
3.1	Certificate of Incorporation, as amended, filed as Exhibit 3.1 to AMD's Amendment No. 1 to its Annual Report on Form 10-K for the fiscal year ended December 26, 1999, is hereby incorporated by reference.
3.2	Bylaws, as amended, filed as Exhibit 3.2 to AMD's Amendment No. 4 to Form S-3 Registration Statement (No. 333-84028), are hereby incorporated by reference.
3.3	Certificate of Amendment to Restated Certificate of Incorporation dated May 25, 2000, filed as Exhibit 3.3 to AMD's Quarterly Report on Form 10-Q for the period ended July 2, 2000, is hereby incorporated by reference.

Table of Contents

Exhibit Number	Description of Exhibits
4.1	AMD hereby agrees to file on request of the Commission a copy of all instruments not otherwise filed with respect to AMD's long-term debt or any of its subsidiaries for which the total amount of securities authorized under such instruments does not exceed 10 percent of the total assets of AMD and its subsidiaries on a consolidated basis.
4.2	Indenture governing 4.75% Convertible Senior Debentures due 2022, dated January 29, 2002, between AMD and The Bank of New York, filed as Exhibit 4.14 to AMD's Annual Report on Form 10-K for the fiscal year ended December 30, 2001, is hereby incorporated by reference.
4.3	Form of 4.75% Convertible Senior Debenture due 2022, filed as Exhibit 4.15 to AMD's Annual Report on Form 10-K for the fiscal year ended December 30, 2001, is hereby incorporated by reference.
4.4	Indenture governing 4.50% Convertible Senior Notes due 2007, dated November 25, 2002, between AMD and The Bank of New York, filed as Exhibit 4.1 to AMD's Current Report on Form 8-K dated November 26, 2002, is hereby incorporated by reference.
4.5	Form of 4.50% Convertible Senior Note due 2007, filed as Exhibit 4.3 to AMD's Current Report on Form 8-K dated November 26, 2002, is hereby incorporated by reference.
4.6	Indenture governing 7.75% Senior Notes due 2012, dated October 29, 2004, between Advanced Micro Devices, Inc. and Wells Fargo Bank, N.A., filed as Exhibit 4.1 to AMD's Form 8-K dated November 2, 2004, is hereby incorporated by reference.
4.7	Form of 7.75% Senior Note due 2012, filed as Exhibit 4.2 to AMD's Form 8-K dated November 2, 2004, is hereby incorporated by reference.
4.8	Registration Rights Agreement, dated October 29, 2004, by and among Advanced Micro Devices, Inc. and Citigroup Global Markets Inc., filed as Exhibit 10.1 to AMD's Form 8-K dated November 2, 2004, is hereby incorporated by reference.
*10.1	AMD 1986 Stock Option Plan, as amended, filed as Exhibit 10.2 to AMD's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
*10.2	AMD 1992 Stock Incentive Plan, as amended, filed as Exhibit 10.3 to AMD's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, is hereby incorporated by reference.
*10.3	Forms of Stock Option Agreements, filed as Exhibit 10.8 to AMD's Annual Report on Form 10-K for the fiscal year ended December 29, 1991, are hereby incorporated by reference.
*10.4	Forms of Restricted Stock Agreements, filed as Exhibit 10.11 to AMD's Annual Report on Form 10-K for the fiscal year ended December 29, 1991, are hereby incorporated by reference.
*10.5	Resolution of Board of Directors on September 9, 1981, regarding acceleration of vesting of all outstanding stock options and associated limited stock appreciation rights held by officers under certain circumstances, filed as Exhibit 10.10 to AMD's Annual Report on Form 10-K for the fiscal year ended March 31, 1985, is hereby incorporated by reference.
*10.6	Amended and Restated Employment Agreement, dated as of November 3, 2000, between AMD and W. J. Sanders III, filed as Exhibit 10.12 to AMD's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, is hereby incorporated by reference.
*10.7	AMD 2000 Stock Incentive Plan, as amended, filed as Exhibit 10.12 to AMD's Quarterly Report on Form 10-Q for the fiscal quarter ended June 29, 2003, is hereby incorporated by reference.
*10.8	AMD's U.S. Stock Option Program for options granted after April 25, 2000, filed as Exhibit 10.14 to AMD's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, is hereby incorporated by reference.
*10.9	Vice President Performance Recognition Program.

Table of Contents

Exhibit Number	Description of Exhibits
*10.10	AMD Executive Incentive Plan, filed as Exhibit 10.14(b) to AMD's Quarterly Report on Form 10-Q for the period ended June 30, 1996, is hereby incorporated by reference.
*10.11	Form of Bonus Deferral Agreement, filed as Exhibit 10.12 to AMD's Annual Report on Form 10-K for the fiscal year ended March 30, 1986, is hereby incorporated by reference.
*10.12	Form of Executive Deferral Agreement, filed as Exhibit 10.17 to AMD's Annual Report on Form 10-K for the fiscal year ended December 31, 1989, is hereby incorporated by reference.
*10.13	Form of Management Continuity Agreement, filed as Exhibit 10.18 to AMD's Quarterly Report on Form 10-Q for the period ended September 26, 2004, is hereby incorporated by reference.
*10.14	AMD's Stock Option Program for Employees Outside the U.S. for options granted after April 25, 2000, filed as Exhibit 10.24 to AMD's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, is hereby incorporated by reference.
**10.15	AMD's U.S. Stock Option Program for options granted after April 24, 2001, filed as Exhibit 10.23(a) to AMD's Annual Report on Form 10-K for the fiscal year ended December 30, 2001, is hereby incorporated by reference.
10.16	Patent License Agreement, dated as of December 3, 1998, between AMD and Motorola, Inc., filed as Exhibit 10.26 to AMD's Annual Report on Form 10-K for the fiscal year ended December 27, 1998, is hereby incorporated by reference.
*10.17	Lease Agreement, dated as of December 22, 1998, between AMD and Delaware Chip LLC, filed as Exhibit 10.27 to AMD's Annual Report on Form 10-K for the fiscal year ended December 27, 1998 is hereby incorporated by reference.
*10.18	AMD Executive Savings Plan (Amendment and Restatement, effective as of August 1, 1993), filed as Exhibit 10.30 to AMD's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.
*10.18(a)	First Amendment to the AMD Executive Savings Plan (as amended and restated, effective as of August 1, 1993), filed as Exhibit 10.28(b) to AMD's Annual Report on Form 10-K for the fiscal year ended December 28, 1997, is hereby incorporated by reference.
*10.18(b)	Second Amendment to the AMD Executive Savings Plan (as amended and restated, effective as of August 1, 1993), filed as Exhibit 10.28(b) to AMD's Annual Report on Form 10-K for the fiscal year ended December 28, 1997, is hereby incorporated by reference.
*10.18(c)	Amendment Number Three to the AMD Executive Savings Plan, effective as of April 1, 1998.
*10.19	Form of Split Dollar Agreement, as amended, filed as Exhibit 10.31 to AMD's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.
*10.20	Form of Collateral Security Assignment Agreement, filed as Exhibit 10.32 to AMD's Annual Report on Form 10-K for the fiscal year ended December 26, 1993, is hereby incorporated by reference.
*10.21	Forms of Stock Option Agreements to the 1992 Stock Incentive Plan, filed as Exhibit 4.3 to AMD's Registration Statement on Form S-8 (No. 33-46577), are hereby incorporated by reference.
*10.22	1992 United Kingdom Share Option Scheme, filed as Exhibit 4.2 to AMD's Registration Statement on Form S-8 (No. 33-46577), is hereby incorporated by reference.
*10.23	AMD 1998 Stock Incentive Plan, as amended, filed as Exhibit 10.32 to AMD's Quarterly Report on Form 10-Q for the fiscal quarter ended June 29, 2003, is hereby incorporated by reference.
*10.24	Form of indemnification agreements with officers and directors of AMD, filed as Exhibit 10.38 to AMD's Annual Report on Form 10-K for the fiscal year ended December 25, 1994, is hereby incorporated by reference.

Table of Contents

Exhibit Number	Description of Exhibits
10.25	1995 Stock Plan of NexGen, Inc., as amended, filed as Exhibit 10.34 to AMD's Quarterly Report on Form 10-Q for the fiscal quarter ended June 29, 2003, is hereby incorporated by reference.
10.26	Contract for Transfer of the Right to the Use of Land between AMD (Suzhou) Limited and China-Singapore Suzhou Industrial Park Development Co., Ltd., filed as Exhibit 10.39 to AMD's Annual Report on Form 10-K for the fiscal year ended December 31, 1995, is hereby incorporated by reference.
**10.27	C-4 Technology Transfer and Licensing Agreement dated June 11, 1996, between AMD and IBM Corporation, filed as Exhibit 10.48 to AMD's Amendment No. 1 to its Quarterly Report on Form 10-Q/A for the period ended September 29, 1996, is hereby incorporated by reference.
**10.27(a)	Amendment No. 1 to the C-4 Technology Transfer and Licensing Agreement, dated as of February 23, 1997, between AMD and International Business Machine Corporation, filed as Exhibit 10.48(a) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.
**10.27(b)	Letter Agreement, effective as of September 13, 2004, between Advanced Micro Devices, Inc. and International Business Machines Corp. filed as Exhibit 10.36(b) to AMD's Quarterly Report on Form 10-Q for the period ended September 26, 2004, is hereby incorporated by reference.
**10.28	Design and Build Agreement dated November 15, 1996, between AMD Saxony Manufacturing GmbH and Meissner and Wurst GmbH, filed as Exhibit 10.49(a) to AMD's Annual Report on Form 10-K for the fiscal year ended December 29, 1996, is hereby incorporated by reference.
**10.28(a)	Amendment to Design and Build Agreement dated January 16, 1997, between AMD Saxony Manufacturing GmbH and Meissner and Wurst GmbH filed as Exhibit 10.49(b) to AMD's Annual Report on Form 10-K for the fiscal year ended December 29, 1996, is hereby incorporated by reference.
10.29(a)	AMD Subsidy Agreement, between AMD Saxony Manufacturing GmbH and Dresdner Bank AG, filed as Exhibit 10.50(c) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.
**10.29(b)	Subsidy Agreement, dated February 12, 1997, between Sachsische Aufbaubank and Dresdner Bank AG, with Appendices 1, 2a, 2b, 3 and 4, filed as Exhibit 10.50(d) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.
**10.29(c-1)	AMD Holding Wafer Purchase Agreement, dated as of March 11, 1997, among AMD and AMD Saxony Holding GmbH, filed as Exhibit 10.50(j) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.
**10.29(c-2)	First Amendment to AMD Holding Wafer Purchase Agreement, dated as of February 20, 2001, between AMD and AMD Saxony Holding GmbH, filed as Exhibit 10.50(j-1) to AMD's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, is hereby incorporated by reference.
**10.29(d)	AMD Holding Research, Design and Development Agreement, dated as of March 11, 1997, between AMD Saxony Holding GmbH and AMD, filed as Exhibit 10.50(k) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.

Table of Contents

Exhibit Number	Description of Exhibits
**10.29(e-1)	AMD Saxonia Wafer Purchase Agreement, dated as of March 11, 1997, between AMD Saxony Holding GmbH and AMD Saxony Manufacturing GmbH, filed as Exhibit 10.50(l) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.
**10.29(e-2)	First Amendment to AMD Saxonia Wafer Purchase Agreement, dated as of February 6, 1998, between AMD Saxony Holding GmbH and AMD Saxony Manufacturing GmbH, filed as Exhibit 10.50 (l-2) to AMD's Annual Report on Form 10-K for the fiscal year ended December 28, 1997, is hereby incorporated by reference.
**10.29(e-3)	Second Amendment to AMD Saxonia Wafer Purchase Agreement, dated as of February 20, 2001, between AMD Saxony Holding GmbH and AMD Saxony Manufacturing GmbH, filed as Exhibit 10.50(1-3) to AMD's Annual Report on Form 10-K for the fiscal year ended December 31, 2000, is hereby incorporated by reference.
10.29(e-4)	Third Amendment to AMD Saxonia Wafer Purchase Agreement, dated as of June 3, 2002, between AMD Saxony Holding GmbH and AMD Saxony Manufacturing GmbH, filed as Exhibit 10.43(l-4) to AMD's Quarterly Report on Form 10-Q for the period ended June 30, 2002, is hereby incorporated by reference.
10.29(e-5)	Fourth Amendment to AMD Saxonia Wafer Purchase Agreement, dated as of February 24, 2004, between AMD Saxony Holding GmbH and AMD Saxony Limited Liability and Co. KG, filed as Exhibit 10.38(l-5) to AMD's Annual Report on Form 10-K for the fiscal year ended December 28, 2003, is hereby incorporated by reference.
**10.29(f)	AMD Saxonia Research, Design and Development Agreement, dated as of March 11, 1997, between AMD Saxony Manufacturing GmbH and AMD Saxony Holding GmbH, filed as Exhibit 10.50(m) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.
10.29(g)	License Agreement, dated March 11, 1997, among AMD, AMD Saxony Holding GmbH and AMD Saxony Manufacturing GmbH, filed as Exhibit 10.50(n) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.
**10.29(h-1)	ISDA Agreement, dated March 11, 1997, between AMD and AMD Saxony Manufacturing GmbH, filed as Exhibit 10.50(p) to AMD's Quarterly Report on Form 10-Q for the period ended March 30, 1997, is hereby incorporated by reference.
**10.29(h-2)	Confirmation to ISDA Agreement, dated February 6, 1998, between AMD and AMD Saxony Manufacturing GmbH, filed as Exhibit 10.50(p-2) to AMD's Annual Report on Form 10-K for the fiscal year ended December 28, 1997, is hereby incorporated by reference.
10.30	Amended and Restated Loan and Security Agreement, dated as of July 7, 2003, among AMD, AMD International Sales and Service, Ltd. and Bank of America NT&SA as agent, filed as Exhibit 10.44 to AMD's Quarterly Report on Form 10-Q for the period ended June 29, 2003, is hereby incorporated by reference.
10.30(a)	First Amendment to Amended and Restated Loan and Security Agreement, dated as of October 3, 2003, among AMD, AMD International Sales & Service, Ltd. and Bank of America NT&SA, as agent, filed as Exhibit 10.44(a-1) to AMD's Quarterly Report on Form 10-Q for the period ended September 28, 2003, is hereby incorporated by reference.

Table of Contents

Exhibit Number	Description of Exhibits
10.30(b)	Second Amendment to Amended and Restated Loan and Security Agreement dated April 19, 2004, by and among AMD, AMD International Sales & 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, filed as Exhibit 10.39(a-2) to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.30(c)	Third Amendment to Amended and Restated Loan and Security Agreement by and between Advanced Micro Devices, Inc., AMD International Sales & Service, Ltd., and the several financial institutions party thereto, dated September 20, 2004, filed as Exhibit 10.39(a-3) to AMD's Form 8-K dated September 21, 2004, is hereby incorporated by reference.
*10.31	Employment Agreement, dated as of January 31, 2002, between AMD and Hector de J. Ruiz, filed as Exhibit 10.47 to AMD's Annual Report on Form 10-K for the fiscal year ended December 30, 2001, is hereby incorporated by reference.
*10.31(a)	Amendment to Employment Agreement between Advanced Micro Devices, Inc. and Hector Ruiz, dated as of October 27, 2004, filed as Exhibit 10.2 to AMD's Form 8-K dated November 2, 2004, is hereby incorporated by reference.
*10.32	Form of indemnification agreements with officers and directors of AMD, filed as Exhibit 10.56 to AMD's Annual Report on Form 10-K for the fiscal year ended December 26, 1999, is hereby incorporated by reference.
*10.33	Employment Agreement, dated as of September 27, 2000, between AMD and Robert J. Rivet, filed as Exhibit 10.57 to AMD's Quarterly Report on Form 10-Q for the period ended July 1, 2001, is hereby incorporated by reference.
**10.34	Patent Cross-License Agreement, dated as of May 4, 2001, between AMD and Intel Corporation, filed as Exhibit 10.58 to AMD's Quarterly Report on Form 10-Q for the period ended July 1, 2001, is hereby incorporated by reference.
**10.35	Joint Development Agreement, dated as of January 31, 2002, between AMD and United Microelectronics Corporation, filed as Exhibit 10.52 to AMD's Amendment No. 1 to its Quarterly Report on Form 10-Q/A for the period ended March 31, 2002, is hereby incorporated by reference.
**10.36	Amended and Restated "S" Process Development Agreement, effective as of December 28, 2002, between Advanced Micro Devices, Inc. and International Business Machines Corp., filed as Exhibit 10.47 to AMD's Quarterly Report on Form 10-Q for the period ended September 26, 2004, is hereby incorporated by reference.
**10.37	Term Loan Agreement, dated as of July 11, 2003, among FASL LLC, General Electric Capital Corporation, as agent, and the financial institutions named therein, filed as Exhibit 10.51 to AMD's Quarterly Report on Form 10-Q for the period ended June 29, 2003, is hereby incorporated by reference.
10.37(a)	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, filed as Exhibit 10.48(a-1) to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
***10.38	Amended and Restated Limited Liability Company Operating Agreement of FASL LLC dated as of June 30, 2003.

Table of Contents

Exhibit Number	Description of Exhibits
10.39	Contribution and Assumption Agreement by and among Advanced Micro Devices, Inc., AMD Investments, Inc., Fujitsu Limited, Fujitsu Microelectronics Holdings, Inc., and FASL LLC dated as of June 30, 2003, filed as Exhibit 10.53 to AMD's Quarterly Report on Form 10-Q for the period ended June 29, 2003, is hereby incorporated by reference.
10.40	Asset Purchase Agreement by and among Advanced Micro Devices, Inc., Fujitsu Limited and FASL LLC dated as of June 30, 2003, filed as Exhibit 10.54 to AMD's Quarterly Report on Form 10-Q for the period ended June 29, 2003, is hereby incorporated by reference.
***10.41	AMD-FASL Patent Cross-License Agreement by and between Advanced Micro Devices, Inc. and FASL LLC dated as of June 30, 2003.
***10.42	AMD Distribution Agreement by and between Advanced Micro Devices, Inc. and FASL LLC dated as of June 30, 2003.
***10.43	Non-Competition Agreement by and among Advanced Micro Devices, Inc., AMD Investments, Inc., Fujitsu Limited, Fujitsu Microelectronics Holding, Inc. and FASL LLC dated as of June 30, 2003.
*10.44	AMD 1996 Stock Incentive Plan, as amended, filed as Exhibit 10.58 to AMD's Quarterly Report on Form 10-Q for the period ended June 29, 2003, is hereby incorporated by reference.
**10.45	Loan Agreement, dated as of September 25, 2003, among FASL JAPAN LIMITED, Mizuho Corporate Bank, Ltd., and the bank party thereto, filed as Exhibit 10.56 to AMD's Annual Report on Form 10-K for the fiscal year ended December 28, 2003, is hereby incorporated by reference.
10.46	Master Rental Agreement, dated July 16, 2003, among GE Capital Leasing Corporation, as Lessor, FASL JAPAN LIMITED, as Lessee, and Advanced Micro Devices, Inc. as Guarantor, filed as Exhibit 10.64 to AMD's Quarterly Report on Form 10-Q for the period ended September 28, 2003, is hereby incorporated by reference.
***10.47	Agreement between SI Investment Limited Liability Company & Co KG and M+W Zander Facility Engineering GmbH, dated November 20, 2003.
***10.48	Cooperation Agreement between Advanced Micro Devices, Inc., the Free State of Saxony and M+W Zander Fünfte Verwaltungsgesellschaft mbH, dated November 20, 2003.
**10.49(a)	Revolving Line Agreement (A) dated March 25, 2004 among FASL Japan Limited, Mizuho Corporate Bank, Ltd. and the banks party thereto, filed as Exhibit 10.60(a) to AMD's Quarterly Report on Form 10-Q for the period ended March 28, 2004, is hereby incorporated by reference.
**10.49(b)	Revolving Line Agreement (B) dated March 25, 2004 among FASL Japan Limited, Mizuho Corporate Bank, Ltd. and the banks party thereto, filed as Exhibit 10.60(b) to AMD's Quarterly Report on Form 10-Q for the period ended March 28, 2004, is hereby incorporated by reference.
**10.49(c)	Accounts Receivables Trust Agreement between FASL Japan Limited and Mizuho Trust and Banking Co., Ltd., filed as Exhibit 10.60(c) to AMD's Quarterly Report on Form 10-Q for the period ended March 28, 2004, is hereby incorporated by reference.
10.49(d)	Floating Pledge Agreement dated March 25, 2004 among FASL Japan Limited and Mizuho Corporate Bank, Ltd. and the financial institutions specified therein, filed as Exhibit 10.60(d) to AMD's Quarterly Report on Form 10-Q for the period ended March 28, 2004, is hereby incorporated by reference.

Table of Contents

Exhibit Number	Description of Exhibits
**10.50	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, filed as Exhibit 10.61 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.51	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, filed as Exhibit 10.62 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.52	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., filed as Exhibit 10.63 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.53	License Agreement dated April 21, 2004, between AMD, AMD Fab 36 Holding GmbH and AMD Fab 36 Limited Liability Company & Co. KG, filed as Exhibit 10.64 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
**10.54	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, filed as Exhibit 10.65 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
**10.55	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, filed as Exhibit 10.66 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.56	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, filed as Exhibit 10.67 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.57	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, filed as Exhibit 10.68 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.58	AMD Fab 36 Holding Cost Plus Reimbursement Agreement dated April 21, 2004, between AMD Fab 36 Holding GmbH and AMD, filed as Exhibit 10.69 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.59	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, filed as Exhibit 10.70 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.

Table of Contents

<u>Exhibit Number</u>	<u>Description of Exhibits</u>
10.60	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, filed as Exhibit 10.71 to AMD's Quarterly Report on Form 10-Q for the period ended June 27, 2004, is hereby incorporated by reference.
10.61	Master Lease Agreement dated January 5, 2005, between SumiCrest Leasing Ltd. and Spansion Japan Limited.
10.62	Master Purchase Agreement dated January 5, 2005, between Spansion Japan Limited and SumiCrest Leasing Ltd.
21	List of AMD subsidiaries.
23	Consent of Independent Registered Public Accounting Firm.
24	Power of Attorney.
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 Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of the Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Management contracts and compensatory plans or arrangements required to be filed as an Exhibit to comply with Item 14(a)(3) of Form 10-K.

** Portions of this Exhibit have been omitted pursuant to a request for confidential treatment, which has been granted. These portions have been filed separately with the Securities and Exchange Commission.

*** Portions of this Exhibit have been omitted pursuant to a request for confidential treatment. These portions have been filed separately with the Securities and Exchange Commission.

AMD will furnish a copy of any exhibit on request and payment of AMD's reasonable expenses of furnishing such exhibit.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

February 24, 2005

ADVANCEDMICRO DEVICES, INC.

By: _____ /s/ ROBERT J. RIVET

Robert J. Rivet
 Executive Vice President,
 Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons, on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
* _____ Hector de. J. Ruiz	Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)	February 24, 2005
/s/ ROBERT J. RIVET _____ Robert J. Rivet	Executive Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	February 24, 2005
* _____ W. Michael Barnes	Director	February 24, 2005
* _____ Charles M. Blalack	Director	February 24, 2005
* _____ R. Gene Brown	Director	February 24, 2005
* _____ Bruce Claffin	Director	February 24, 2005
* _____ H. Paulett Eberhart	Director	February 24, 2005
* _____ David J. Edmondson	Director	February 24, 2005
* _____ Robert B. Palmer	Director	February 24, 2005
* _____ Leonard Silverman	Director	February 24, 2005
* _____ Morton L. Topfer	Director	February 24, 2005

By: _____ /s/ ROBERT J. RIVET

(Robert J. Rivet, Attorney-in-Fact)

ADVANCED MICRO DEVICES, INC.
VALUATION AND QUALIFYING ACCOUNTS
Years Ended
December 29, 2002, December 28, 2003 and December 26, 2004
(In thousands)

	<u>Balance Beginning of Period</u>	<u>Additions Charged (Reductions Credited) To Operations</u>	<u>Deductions⁽¹⁾</u>	<u>Balance End of Period</u>
Allowance for doubtful accounts:				
Years ended:				
December 29, 2002	19,270	1,456	(1,820)	18,906
December 28, 2003	18,906	23,541	(21,789)	20,658
December 26, 2004	20,658	8,763	(11,584)	17,837

⁽¹⁾ Accounts (written off) recovered, net.

AMENDMENT NUMBER THREE TO THE
ADVANCED MICRO DEVICES
EXECUTIVE SAVINGS PLAN

Effective as of April 1, 1998, the Advanced Micro Devices Executive Savings Plan (the "Plan") is amended in the following respects:

1. The first paragraph of Section 9.2 entitled "RESTRICTION AGAINST ASSIGNMENT" is amended in its entirety as follows:

The Company shall pay all amounts payable hereunder only to the person or persons designated by or under the Plan and not to any other person or corporation. Except as otherwise provided in this Section 9.2 or Section 9.3, no part of a Participant's Accounts shall be liable for the debts, contracts, or engagements of any Participant, his or her Beneficiary, or successors in interest, nor shall a Participant's Accounts be subject to execution by levy, attachment, or garnishment or by any other legal or equitable proceeding, nor shall any such person have the right to alienate, anticipate, commute, pledge, encumber, or assign any benefits or payments hereunder in any manner whatsoever. Except as otherwise provided in this Section 9.2 or Section 9.3, if any Participant, Beneficiary or successor in interest is adjudicated bankrupt or purports to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any distribution or payment from the Plan, voluntarily or involuntarily, the Committee, in its discretion, may cancel such distribution or payment (or any part thereof) to or for the benefit of such Participant, Beneficiary or successor in interest in such manner as the Committee shall direct.

2. A new Section 9.3 entitled "PAYMENT UNDER DOMESTIC RELATIONS ORDER" is hereby added after Section 9.2, entitled "RESTRICTION AGAINST ASSIGNMENT" and before existing Section 9.3, entitled "WITHHOLDING" (which now becomes Section 9.4), to read as follows:

9.3 Payment Under Domestic Relations Order.

The creation, assignment or recognition of a right of a Participant's spouse or former spouse ("Alternate Payee") to all or a portion of a Participant's Accounts pursuant to a state domestic relations order ("DRO") shall not constitute a violation of Section 9.2 or any other provision of the Plan, provided such order is consistent with the terms of the Plan and approved by the Committee or its delegate. Notwithstanding the foregoing or any provision of a DRO to contrary, the Alternate Payee's interest in the Plan shall remain the property of the Company and subject to the claims of its creditors until such time as payments are made to the Alternate Payee in accordance with the terms of the DRO. In all cases, any amount assigned to an Alternate Payee pursuant to a DRO shall be subject to Section 10.1 of the Plan as though such amounts were still credited to the Participant's Accounts.

(a) As soon as practicable after the Committee approved a DRO, the Committee may establish a separate bookkeeping account ("Account") for the Alternate Payee to which shall be transferred the portion of the Participant's Accounts which are assigned to the Alternate Payee under the DRO. Any such Account shall, to the extent applicable, be established and maintained in accordance with the terms of Article IV and Article V. Except as a DRO may otherwise provide, if a single amount or percentage of such Participant's Accounts is assigned to an Alternate Payee, the transfer to the Account established for the Alternate Payee shall be made pro rata from such investments as the assets of the Participant's Accounts are then deemed to be invested.

(b) The Alternate Payee shall be permitted to designate the type of mutual funds or contracts that his or her Account will be deemed to be invested in accordance with the procedures set forth in Section 3.2. If the Alternate Payee fails to elect a type of fund or contract, he or she shall be deemed to have elected the Fund determined by the Committee to most closely approximate a money market fund in accordance with the procedures set forth in Section 3.2.

(c) The Alternate Payee may not borrow from the Account established for the Alternate Payee.

(d) To the extent provided in the DRO, the Alternate Payee may elect to have his or her Account distributed as follows:

(1) In an immediate lump sum;

(2) At the time and in the form elected by the Alternate Payee pursuant to Article VI, provided however, that the Alternate Payee must commence distribution of the Alternate Payee's Account no later than the time that the Participant (or the Participant's Beneficiary, if applicable) commences distribution of his or her Accounts; or

(3) At a time and in a form approved by the Committee, provided however, that the Alternate Payee must commence distribution of the Alternate Payee's Account no later than the time that the Participant (or the Participant's Beneficiary, if applicable) commences distribution of his or her Accounts.

(e) If the Alternate Payee dies prior to the time that the Alternate Payee has received all or any portion of the Alternate Payee's Account, the amounts recorded in such account may be paid to the beneficiary ("Beneficiary") designated by the Alternate Payee on forms provided by the Committee. If the Alternate Payee does not make an effective designation of Beneficiary or if the designated Beneficiary is not living when a distribution is to be made, such amounts shall be paid to the Alternate Payee's estate, except as a DRO may otherwise provide. Such amounts shall be paid at the time and in the manner permitted under the terms of the Plan and approved by the Committee.

(f) The Participant's death prior to the time that the Alternate Payee has received all or any portion of the Alternate Payee's Account shall not affect the Alternate Payee's Account. The Alternate Payee shall not be awarded any survivor benefits upon the Participant's death, unless the Participant designates the Alternate Payee as a Beneficiary in accordance with the terms of the Plan.

(g) The Participant's Accounts shall be reduced by the amounts assigned to an Alternate Payee pursuant to a DRO; provided, however, that any amounts assigned to an Alternate Payee pursuant to a DRO shall continue to be subject to Section 10.1 as though such amounts were still credited to the Participant's Accounts.

(h) Notwithstanding any provision of any DRO to the contrary, the Company reserves the unilateral right to terminate or restrict an Alternate Payee's participation at any time, and distribute all amounts due to such Alternate Payee.

IN WITNESS WHEREOF, Advanced Micro Devices hereby adopts this Amendment Number Three to the Plan, effective as of April 1, 1998.

Date: 8/12/1998

/s/ STAN WINVICK

**VICE PRESIDENT
PERFORMANCE
RECOGNITION PROGRAM**

Personal and Confidential



VP PERFORMANCE RECOGNITION PROGRAM

I. Purpose

The Vice President Incentive Program (VPIP) recognizes and rewards AMD's and SPANSION LLC's Vice Presidents (Participants) for furthering AMD's and SPANSION LLC's ongoing success against both short- and long-term objectives.

II. Plan Overview

The **Short-Term Plan (STP)** provides an award for meeting or exceeding planned performance for the current fiscal year (Plan Year).

The **Long-Term Plan (LTP)** provides an annual award for sustained corporate performance over a three-fiscal-year period relative to external measures.

Within these plans, the performance objectives are as follows:

<u>Plan</u>	<u>Component</u>	<u>Metric(s)</u>
STP	Corporate Performance Award (CPA)	Corporate Operating Profit vs. Plan
	Group Performance Award (GPA)	Group Operating Profit vs. Plan
	Individual Performance Award (IPA)	Performance against Balanced Scorecard
LTP	Relative Profitability	AMD Return on Equity (ROE) vs. S&P 500 Return on Equity (ROE) over 3 years
	Relative Sales Growth	AMD Sales Growth vs. WSTS Sales Growth over 3 years

The following sections discuss the plan provisions in further detail. All awards are subject to the Plan funding, maximum and carryover provisions detailed in Section V. A separate communication outlining the assigned target percentages for each component of the Plans, and division assignments and financial goals for the STP, will be provided to Participants each year.

III. Short Term Plan (STP)

The STP uses three different components to measure and reward the Participant's annual contributions: *Corporate, Group* and *Individual*.

The payout opportunity and the weight of each component vary depending upon the Participant's role and the tier to which he/she is assigned by management.

The Corporate and Group Performance components of the Plan are split into two six-month performance periods. Planned corporate and operating group objectives for the first half of the year are generally based on the Board Approved Corporate Budget. Objectives for the second half are established using the mid-year update of the Corporate Budget.

A. Corporate Performance Award (CPA)

The CPA is earned by meeting or exceeding specific levels of Operating Profit (OP) against the Plan for the performance period.

For each half-year performance period a multiplier is derived based on *Actual OP* vs. *Planned OP*. The multiplier is then applied against the CPA target bonus to determine the accrued award.

The threshold level, below which the multiplier is zero, is 80% of Planned OP by default. This threshold will be confirmed or revised for any Plan Year at the discretion of the CEO.

The multiplier is 1.0 when Actual OP equals Planned OP.

For performance between 80% and 100% of Planned OP, the multiplier is prorated on a straight-line basis.

For performance above Planned OP in each half-year performance period, a pool of funds is created using a percentage of the OP above Planned OP. This percentage is determined each year by the Office of the CEO.

This pool is used to pay individual discretionary awards beyond target performance.

VP PERFORMANCE RECOGNITION PROGRAM

Any pool award generated for the first-half performance period is held in reserve pending the final OP for the year. If, for the year, Actual OP is below the combined threshold for the two separate performance periods, any pool generated for the first half of the year is forfeited.

There is no maximum *accrued* award on this component of the Plan. The maximum *paid* in any year is subject to the Plan funding, maximum and carryover provisions explained in section V.

The following table illustrates four payment calculation examples for a participant with a CPA target of 10% of pay, a base salary of \$225,000, and a pool of 10% of excess OP:

	First Half (\$M)					
	Planned OP	OP Threshold (80%)	Actual OP	Perf. %	Target Mult. (Max = 1.00)	S Pool for Distribution
Case 1	200	160	240	120	1.00	4.00
Case 2 (Target Perf.)	200	160	200	100	1.00	0.00
Case 3	200	160	220	110	1.00	2.00
Case 4	200	160	170	85	0.25	0.00

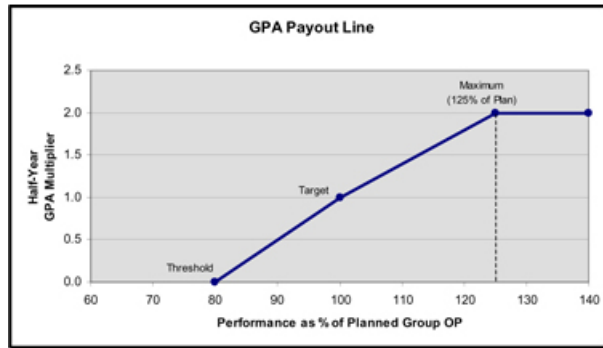
	Second Half (\$M)					
	Planned OP	OP Threshold (80%)	Actual OP	Perf. %	Target Mult. (Max = 1.00)	S Pool for Distribution
Case 1	300	240	315	105	1.00	1.50
Case 2 (Target Perf.)	300	240	300	100	1.00	0.00
Case 3	300	240	165	55	0.00	0.00
Case 4	300	240	150	50	0.00	0.00

	Annual (\$M)							
	Base Salary	Combined OP Threshold	Actual OP	CPA Mult.	CPA Target	Award %	Award \$	Total \$ Pool for Distribution
Case 1	\$225,000	400	555	1.00	10.0%	10.00%	\$22,500	5.50
Case 2 (Target Perf.)	\$225,000	400	500	1.00	10.0%	10.00%	\$22,500	0.00
Case 3	\$225,000	400	385	0.50	10.0%	5.00%	\$11,250	0.00
Case 4	\$225,000	400	320	0.13	10.0%	1.30%	\$ 2,925	0.00

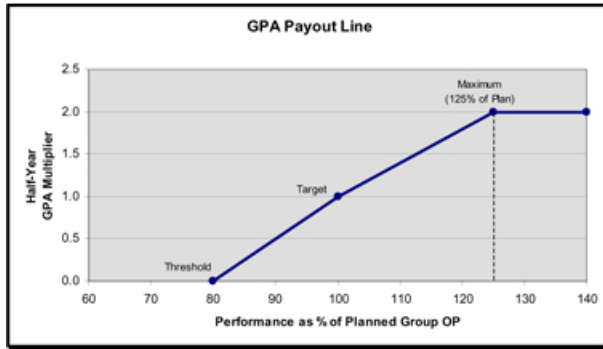
Pool eliminated from First Half since combined threshold not met

B. Group Performance Award (GPA)

The GPA depends on *Actual* Group Operating Profit (OP) versus *Planned* Group OP. Similar to the CPA, for each half-year performance period a multiplier is derived based on Actual Group OP vs. Planned Group OP as illustrated in the following graph:



VP PERFORMANCE RECOGNITION PROGRAM



The multiplier is then applied against the GPA target award to determine the accrued award.

The threshold is 80% of planned Group OP, by default.

The multiplier is 1.0 when Actual GOP equals Planned GOP.

The maximum multiplier in each half-year period is 2.0, generally when 125% performance is achieved.

The threshold and maximum are confirmed or revised in any Plan Year at the discretion of the CEO.

The annual GPA is derived by taking the average of the two half year multipliers.

The following table illustrates four sample payout calculations for a participant with a 25% GPA target:

	First Half					Second Half				
	Planned Group Profit	Threshold (80%)	Actual	Perf. %	Mult.	Planned Group Profit	Threshold (80%)	Actual	Perf. %	Mult.
Case 1	100	80	85	85%	0.25	125	100	120	96%	0.80
Case 2 (Target Perf.)	100	80	100	100%	1.00	125	100	125	100%	1.00
Case 3	100	80	75	75%	75%	125	100	145	116%	1.64
Case 4	100	80	150	130%	2.00	125	100	150	125%	2.00
	Annual									
						Base Salary	GPA Mult.	GPA Target	GPA %	GPA Award
Case 1						\$ 225,000	0.53	25.0%	13.1%	\$ 29,531
Case 2 (Target Perf.)						\$ 225,000	1.00	25.0%	25.0%	\$ 56,250
Case 3						\$ 225,000	0.82	25.0%	20.5%	\$ 46,125
Case 4						\$ 225,000	2.00	25.0%	50.0%	\$ 112,500

VP PERFORMANCE RECOGNITION PROGRAM

C. Individual Performance Award (IPA)

The IPA is based on performance against the established Balanced Scorecard for the year. The IPA target is generally 10% of base salary. However, executive management may adjust the average target percent in any given Plan Year based on the performance of the Company, competitive practices and/or the role of a particular executive.

D. STP Award Calculation

The total STP award is calculated as follows:

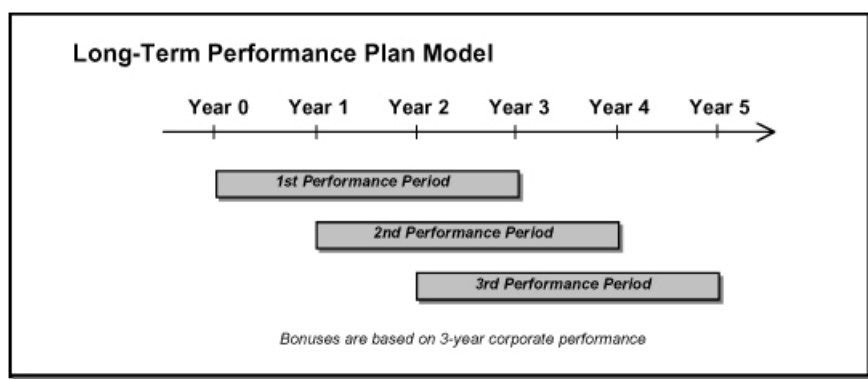
$$\text{STP Award} = \text{CPA} + \text{GPA} + \text{IPA}$$

The following table illustrates this payment calculation, combining the previous examples:

	Base Salary	CPA		GPA		IPA		Total Bonus Award		Additional CPA Pool Award
		%	\$	%	\$	%	\$	%	\$	
Case 1	\$225,000	10.00%	\$22,500	13.13%	\$ 29,531	5.00%	\$ 11,250	28.13%	\$ 63,281	Yes
Case 2 (Target Perf.)	\$225,000	10.00%	\$22,500	25.00%	\$ 56,250	10.00%	\$22,500	45.00%	\$101,250	
Case 3	\$225,000	5.00%	\$ 11,250	20.50%	\$ 46,125	12.00%	\$27,000	37.50%	\$ 84,375	
Case 4	\$225,000	1.30%	\$ 2,925	50.00%	\$112,500	16.00%	\$36,000	67.30%	\$151,425	

IV. Long-Term Plan (LTP)

The LTP rewards sustained corporate performance for both Return on Equity (ROE) and sales growth relative to competitive measures over a rolling three-year period. Except as otherwise set forth in the Employment Agreement for the Chief Executive Officer of the Company (CEO) as amended effective on October 27, 2004 (CEO Employment Agreement), the LTP has an annual target award of 30% of base salary and a maximum opportunity of 60% for all Participants, subject to proration provisions in Section VII F. The model below illustrates the LTP cycles.



A. LTP Plan Components

ROE Component: compares AMD's three-year ROE against the three-year ROE for the S&P 500. This component is weighted at 50%.

Sales Component: compares the difference between AMD's three-year sales growth and the three-year semiconductor industry sales growth, as published by Worldwide Semiconductor Trade Statistics (WSTS) 2. This component is weighted at 50%.

Target multipliers are derived as follows:

		Weighting	Performance Level		
			Threshold	Target (1.0 Multiplier)	Maximum (2.0 Multiplier)
ROE Component	AMD ROE minus S&P 500 ROE (3-year)	50%	-6%	0	6%
Sales Component	AMD Sales Growth % minus WSTS Sales Growth % (3-year)	50%	-30%	0	20%

² Semiconductor industry data may be modified to be more representative of AMD's product offerings. For instance, the DRAM market segment may be excluded from the Total Semiconductor Sales data.

VP PERFORMANCE RECOGNITION PROGRAM

For example, if AMD's 3-year ROE is 10% and the S&P ROE is 10%, the difference is 0. Therefore, a multiplier of 1.0 is generated for the ROE component. If AMD's 3-year Sales Growth is 30% and the WSTS Sales Growth is 10%, the difference is 20%. Therefore, a multiplier of 2.0 is generated for the Sales component. The Combined LTP Target Multiplier is calculated as follows:

$$\text{(ROE Component Multiplier x 50\%)} + \text{(Sales Component Multiplier x 50\%)} = \text{Combined LTP Multiplier}$$

So, in the example above, the Combined LTP Multiplier is 1.5:

$$(1.0 \times 50\%) + (2.0 \times 50\%) = 1.5$$

For either factor, the threshold performance level must be met in order for an LTP award to be generated. The maximum multiplier when both factors are added is two (2.0).

B. LTP Award Calculation

The LTP award is calculated as follows:

$$\text{Combined LTP Multiplier} \times \text{LTP Target (30\%)} \times \text{Base Salary} = \text{LTP}$$

V. Plan Funding, Maximum Awards and Carryovers

The Corporate Component of the STP is funded by a maximum of three percent of AMD's adjusted Operating Profit, as defined in section VIII, for any given Plan Year. In the aggregate, if the Corporate awards exceed the 3 percent limit, each Participant's award will be scaled back to conform.

VP PERFORMANCE RECOGNITION PROGRAM

The Corporate Component will not be paid for any Plan Year in which Corporate OP is less than or equal to \$0.

The 3% of OP funding limitation applies to all STP Components for Officer participants

For Vice Presidents below the Officer Level, the Group and the Individual Components are not affected by the 3% funding limitation.

Assuming the 3% funding limitations above are met, accrued STP awards can be paid in amounts up to 3 times the target award.

Any accrued STP award in excess of the 3 times target maximum will be carried forward and paid out over the following two years. One half of any carryover award will be paid following the first year of the carryover period. The remaining half will be paid following the second year of the carryover period. Carryover payments will be made coincident with the regular Plan payment schedule.

Payment of LTP awards is subject to the 3% funding limitation. Awards generated but not paid due to the limitations will be carried over for possible payout in future Plan years. That amount will be carried over for up to three following Plan Years. Carryover award amounts will be paid at the earliest possible payout date (on a first in, first out basis) during the three-year carryover period, subject to the three percent maximum payout cap and other eligibility provisions. Any amount carried over but not payable during the three-year carryover period reverts to zero.

This Section V shall not apply to payments to the CEO pursuant to his Employment Agreement.

VI. Timing of Payouts

Awards for the STP are generally paid out by the end of the first quarter following the close of a Plan Year. For the LTP, awards are paid as soon as possible after actual external performance data become available. Typically this will be in the 4th quarter following the plan year.

VII. Eligibility for Participation and Receipt of Awards

- A. Unless otherwise determined by the CEO, all non-Sales Vice Presidents, Officers, Sr. Vice Presidents, and Group Vice Presidents are Participants in the LTP. The CEO shall also be a Participant in the LTP.
- B. To be eligible to receive any accrued award under the Plan, a participant must be actively employed by AMD or SPANSION LLC on the actual date of payment of the award.
- C. Payment to a Participant of any calculated award for which the Participant is otherwise eligible is contingent upon that Participant's sustained satisfactory performance during the Plan period for which the award was calculated, as determined by the Participant's immediate superior.
- D. To be eligible to receive an accrued **STP** award of any amount, a participant must have been actively employed in the Plan for some portion of the Plan Year. A participant who is actively employed for less than an entire Plan Year (i.e., became a participant mid-year or was on an unpaid leave), and who is otherwise eligible, will receive a prorated STP award, according to the number of months of active employment in the 12-month STP Plan Year. For purposes of this provision, a full month's credit will be given where the Participant was actively employed in the Plan for at least 15 days of a partial month.
- E. In the event of an employee status change resulting in an approved change of Plan tier (for which different target award levels exist or a group assignment changes), the participation period for each tier is determined using the proration method described above. The monthly salary immediately prior to the status change is used to compute all portions of the award for the first tier. The monthly salary at the end of the Plan Year is used to compute the award for the new tier. Calculations take into account the appropriate targets and maximums for each Plan tier.
- F. To be eligible to receive an **LTP** award of any amount, a participant must have been actively employed in the Plan for at least 12 months. A participant who is actively employed for less than an entire three-year LTP award period (i.e., became a Participant at some time during the period, or was on an unpaid leave), and who is otherwise eligible to receive an LTP award, will receive an LTP award that is prorated according to the number of months of active employment out of the 36-month LTP award period. For purposes of this provision, a full

VP PERFORMANCE RECOGNITION PROGRAM

month's credit will be given where the Participant was actively employed for at least 15 days of a partial month.

- G. A participant who voluntarily terminates employment with AMD or SPANSION LLC and 1) has reached 60 years of age, 2) has 15 years of AMD and/or SPANSION LLC service, and 3) has been actively employed for at least 6 months in the Plan Year is eligible for a payment of an accrued award that is not prorated for less than a full-year's service. Participants actively employed for less than 6 months are eligible for a prorated accrued award. The payment will be based on year-end financial performance and will be made at the same time as other Plan payments. The proration provisions, as discussed in D and F above, will apply. The above conditions apply to any LTP carryover. Any STP carryover is forfeited upon termination of any kind.
- H. If a participant dies during the Plan Year, any accrued award for the current Plan Year will be paid in full so long as the Participant was on active status for at least 6 months of that year. If active for less than 6 months, any award generated at the end of the year will be prorated as above. Payments of any accrued award, including any earned LTP carryover amounts, will be made to the designated recipient of the participant's final paycheck. Any STP carryover awards are forfeited.
- I. No allowance will be made for factors beyond the control of the Plan Participants that either adversely or favorably affect the Plan's performance. There is no vested entitlement to any accrued award as described above. Award payments are made at the sole discretion of the CEO.
- J. AMD reserves the right to retroactively or prospectively modify or terminate the Plan, in whole or in part, and AMD reserves the right to deny the participation of, or payout of an award to, a Participant, at its sole discretion, with or without notice or cause.
- K. Sections VI B – VI J shall not be applicable to the CEO.

VIII. Definition of Terms

Base Salary is defined as the Participant's annualized base pay rate at the end of the Plan Year or, in the case of Plan tier changes, the Participant's annualized base pay rate at the end of the participation period for each separate tier. For a participant who exits the Plan, but retains eligibility, or changes Plan tiers during the year, the annualized

VP PERFORMANCE RECOGNITION PROGRAM

salary will be calculated based on the salary in effect at the time of the change in status.

Participant is defined as a proven contributor in an eligible position subject to the participation guidelines established by senior management. Except for the CEO, the individual must be nominated by his or her Vice President and approved by senior management each Plan Year.

Operating Profit, for Plan purposes, is adjusted for pre-tax income/loss from SPANSION LLC, also referred to as Operating Profit on the Non-GAAP profit and loss statement. Operating Profit is also adjusted to add back any award payments from Corporate award plans.

Corporate Budget is defined as the Corporate Financial Budget established in the 4th quarter of the previous year, generally during the month of November (unless defined otherwise by executive management for the Plan Year in question.)

Mid-Year Update is defined as the update of the Corporate Financial Budget established in the 2nd quarter of the current year, generally in May (unless defined otherwise by executive management for the Plan Year in question.)

Plan Year is defined as the period between January 1 and December 31 of any given year.

The specifics of the Plan are highly confidential and are to be discussed only with the appropriate Vice President, Division Human Resources, or Compensation.

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY
OPERATING AGREEMENT
OF
FASL LLC**

a Delaware Limited Liability Company

MEMBERSHIP INTERESTS IN FASL LLC, A DELAWARE LIMITED LIABILITY COMPANY, HAVE NOT BEEN REGISTERED WITH OR QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE. THE INTERESTS ARE BEING SOLD IN RELIANCE UPON EXEMPTIONS FROM SUCH REGISTRATION OR QUALIFICATION REQUIREMENTS. THE INTERESTS CANNOT BE SOLD, TRANSFERRED, ASSIGNED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH THE RESTRICTIONS ON TRANSFERABILITY CONTAINED IN THE AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF FASL LLC AND APPLICABLE FEDERAL AND STATE SECURITIES LAWS.

Dated as of June 30, 2003

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. ORGANIZATIONAL MATTERS	1
1.1 Continuation	1
1.2 Name	1
1.3 Principal Place of Business; Other Places of Business	2
1.4 Business Purpose	2
1.5 Designated Agent for Service of Process	2
1.6 Term	2
ARTICLE 2. DEFINITIONS	2
ARTICLE 3. CAPITAL; CAPITAL ACCOUNTS AND MEMBERS	21
3.1 Initial Capital Contributions of Members	21
3.2 Additional Capital Contributions by Members	22
3.3 Capital Accounts	22
3.4 Member Capital	22
3.5 Liability of Members	22
ARTICLE 4. FINANCING OF THE COMPANY	23
4.1 Types of Financing	23
4.2 Allocation of Financing Responsibility During the First 4-Year Period	24
4.3 Financing Shortfalls	25
4.4 Operations Shortfalls	27
4.5 Obligations Outstanding at End of 4-Year Period	28
4.6 Financing Responsibility After the First 4-Year Period	28
ARTICLE 5. DISTRIBUTIONS	29
5.1 Distributions of Cash Available for Distribution	29
5.2 Prepayment	33
5.3 Distributions Upon Liquidation	33
5.4 Withholding	33
5.5 Distributions in Kind	34
5.6 Limitations on Distributions	35
ARTICLE 6. ALLOCATIONS OF NET PROFITS AND NET LOSSES	35
6.1 General Allocation of Net Profits and Losses	35
6.2 Regulatory Allocations	35
6.3 Tax Allocations	37
6.4 Other Provisions	38

ARTICLE 7. MANAGEMENT	40
7.1 Board of Managers	40
7.2 Number of Managers; Appointment of Managers	41
7.3 Effect of Change in Fujitsu Member's Percentage Interest on Fujitsu Managers	41
7.4 Effect of Change in AMD Member's Percentage Interest on AMD Managers	42
7.5 Chairman of the Board of Managers	42
7.6 Meetings of Members and of the Board of Managers; Quorum	43
7.7 Actions Requiring a Special Vote of the Board of Managers	44
7.8 Limitations on Authority of Board of Managers	47
7.9 Compensation of Managers	49
7.10 Accounting; Records and Reports	49
7.11 Indemnification and Liability of the Managers	52
7.12 Officers of the Company	53
7.13 Information Technology Steering Committee	55
7.14 Personnel	55
7.15 Human Resources Council	56
7.16 Stock Option Plan	56
7.17 Maintenance of Insurance	58
7.18 Inspections and Proceedings	59
7.19 Confidential Information	59
7.20 Other Activities	60
ARTICLE 8. OPERATIONS	60
8.1 4-Year Operations Plan; Annual Budget	60
8.2 Headquarters	61
8.3 Wafer Fabrication	61
8.4 Assembly, Test, Marking and Packaging	61
8.5 Product Design	61
8.6 Contracting; Transactions Between Company and Members.	61
8.7 Access to Company Facilities	62
8.8 Inventory	62
8.9 Quarterly Beginning Plan	63
8.10 Branding	64
8.11 FASL (Japan)	64
ARTICLE 9. DISPOSITION AND TRANSFERS OF INTERESTS	65
9.1 Holding of Membership Interest	65
9.2 Transfer Moratorium	65
9.3 Transfers	65
9.4 Limitation on Number of Valuation Requests	74
9.5 Further Restrictions on Transfer	75

9.6	Rights of Assignees	75
9.7	Admissions and Withdrawals	75
9.8	Admission of Assignees as Substitute Members	76
9.9	Withdrawal of Members	76
9.10	Compliance With IRS Safe Harbor	76
ARTICLE 10. DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COMPANY; EFFECT OF BREACH		77
10.1	Limitations	77
10.2	Exclusive Causes	77
10.3	Effect of Dissolution	77
10.4	No Capital Contribution Upon Dissolution	77
10.5	Liquidation	78
10.6	Effect of Breach of Operations Shortfall Funding Requirement	79
ARTICLE 11. AMD GUARANTY		80
11.1	Guaranty	80
11.2	AMD Guaranteed Obligations	80
11.3	Guarantee Absolute and Unconditional	81
11.4	Reinstatement	82
11.5	Expenses	82
11.6	Expiration of Guaranty	82
11.7	Limits on Guaranty	82
11.8	Limitation on Claims	83
ARTICLE 12. FUJITSU GUARANTY		83
12.1	Guaranty	83
12.2	Fujitsu Guaranteed Obligations	83
12.3	Guarantee Absolute and Unconditional	84
12.4	Reinstatement	84
12.5	Expenses	85
12.6	Expiration of Guaranty	85
12.7	Limits on Guaranty	85
12.8	Limitation on Claims	86
ARTICLE 13. MISCELLANEOUS		86
13.1	Amendments	86
13.2	No Waiver	86
13.3	Entire Agreement	87
13.4	Further Assurances	87
13.5	Notices	87
13.6	Tax Matters	87
13.7	Governing Law	90

13.8	Construction; Interpretation	90
13.9	Rights and Remedies Cumulative	91
13.10	No Assignment; Binding Effect	91
13.11	Language	91
13.12	Severability	91
13.13	Counterparts	92
13.14	Dispute Resolution	92
13.15	Third-Party Beneficiaries	92
13.16	Specific Performance	92
13.17	Consequential Damages	92

EXHIBIT & SCHEDULES

Exhibit A	Members, Capital Contributions, and Percentage Interests
Exhibit B	Form of Joinder Agreement
Exhibit C	4-Year Fixed Financial Support Plan
Exhibit D	Form of Pull-In Note
Exhibit E-1	Form of Non-Convertible Note
Exhibit E-2	Form of Convertible Note
Exhibit F	Form of Breach Convertible Note
Exhibit G-1	Stock Option Allocation Schedule
Exhibit G-2	Stock Option Allocation Schedule
Schedule A	Dispute Resolution Procedures
Schedule B	Related Party Claim Procedures

iv

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
FASL LLC**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT (this “**Agreement**”) is made and entered into as of the 30th day of June, 2003 (the “**Launch Date**”), by and between AMD Investments, Inc., a Delaware corporation (“**AMD Member**”), and Fujitsu Microelectronics Holding, Inc., a Delaware corporation (“**Fujitsu Member**”), for the purpose of amending and restating the terms of the Limited Liability Company Operating Agreement dated May 15, 2003 (the “**Original Agreement**”) of FASL LLC (the “**Company**”), a limited liability company organized under the Delaware Limited Liability Company Act, as amended from time to time (the “**Act**”). In addition, Advanced Micro Devices, Inc., a Delaware corporation (“**AMD**”), and Fujitsu Limited, a corporation organized under the laws of Japan (“**Fujitsu**”), are entering into this Agreement as of the date first set forth above and are parties hereto not in the capacity of Members of the Company but in order to receive the benefit of and be bound by the applicable provisions hereof.

**ARTICLE 1.
ORGANIZATIONAL MATTERS**

1.1 Continuation

The Company was formed under the Act on April 15, 2003 by filing a Certificate of Formation of the Company (the “**Certificate**”) in the Office of the Secretary of State of the State of Delaware as required by the Act. The Members hereby continue the Company under the Act for the purposes and upon the terms and conditions hereinafter set forth and amend and restate the Original Agreement as set forth herein. AMD Member hereby continues as a Member of the Company, and Fujitsu Member is admitted to the Company as a Member upon its execution of this Agreement. The rights and liabilities of the Members shall be as provided in the Act, except as otherwise expressly provided herein. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the Act, the terms and conditions contained in this Agreement shall govern. If any provision of this Agreement is prohibited or ineffective under the Act, this Agreement will be considered amended to the smallest degree possible in order to make such provision effective under the Act. Subject to the provisions hereof, the Board of Managers may execute and file, or cause an Officer of the Company to file, any duly authorized amendments to the Certificate from time to time in a form prescribed by the Act. The Board of Managers shall also cause to be made, on behalf of the Company, such additional filings and recordings as the Board of Managers shall deem necessary or advisable.

1.2 Name

The name of the Company shall be FASL LLC. The Company may also conduct business at the same time under one or more fictitious names if the Board of Managers determine that such is in the best interests of the Company. The Board of Managers, including by a Special Vote for so long as Fujitsu Member’s Percentage Interest is greater than twenty percent (20%), may change the name of the Company, from time to time, in accordance with Applicable Law.

1.3 Principal Place of Business; Other Places of Business

The principal place of business of the Company is located in Sunnyvale, California or may be such other place within or outside the State of Delaware as the Board of Managers may from time to time designate. The Company may maintain offices and places of business at such other place or places within or outside the State of Delaware, but in all events within the United States, as the Board of Managers deem advisable.

1.4 Business Purpose

The purpose of the Company shall be the (a) development, manufacture and sale of semiconductor devices (including single chip or multiple chip products), a substantial function of which is code and/or data storage; (b) entry into any other lawful business, purpose or activity in which a limited liability company may be engaged under Applicable Law (including, without limitation, the Act) as the Members may determine from time to time, subject to and in accordance with the terms of this Agreement; and (c) entry into any lawful transaction and engagement in any lawful activities in furtherance of the foregoing purposes and as may be necessary, incidental or convenient to carry out the business of the Company as contemplated by this Agreement.

1.5 Designated Agent for Service of Process

The Company shall continuously maintain a registered office and a designated and duly qualified agent for service of process on the Company in the State of Delaware. As of the date hereof, the address of the registered office of the Company in the State of Delaware is Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

1.6 Term

The Company shall continue until the Company is terminated, dissolved or liquidated in accordance with this Agreement and the Act. Notwithstanding the dissolution of the Company, the existence of the Company shall continue until termination pursuant to and as provided in Article 10 of this Agreement.

ARTICLE 2. DEFINITIONS

Capitalized words and phrases used and not otherwise defined elsewhere in this Agreement shall have the following meanings:

“Act” is defined in the preamble.

“Adjusted Capital Account Deficit” means, with respect to any Member at any time, the deficit balance, if any, in such Member’s Capital Account as of such time, after giving effect to the following adjustments:

(1) Add to such Capital Account the amount that such Member is obligated to restore or is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(2) Subtract from such Capital Account such Member’s share of the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Adjusted Tax Liability Distribution Amount” shall mean, with respect to each Member and each Fiscal Year, the aggregate amount of the Tax Liability Distributions made to such Member (during or after such Fiscal Year) with respect to such Fiscal Year (determined without regard to any reduction due to a negative Tax Liability Distribution Adjustment in respect of any prior Fiscal Year(s)), increased (without duplication) by the amount of a positive Tax Liability Distribution Adjustment or decreased by the amount of a negative Tax Liability Distribution Adjustment, in each case, as determined with respect to such Member for such Fiscal Year.

“Affiliate” of a Person means any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. A Person shall be deemed an Affiliate of another Person only so long as such control relationship exists. The parties acknowledge and agree that neither Fujitsu nor AMD is presently controlled by any other Person. Notwithstanding the foregoing, a Company Entity shall not be deemed to be an Affiliate of either Fujitsu or AMD, except where expressly provided in this Agreement.

“Agreement” shall mean this Amended and Restated Limited Liability Company Operating Agreement which shall constitute the limited liability company agreement of the Company within the meaning of the Act.

“AMD” is defined in the preamble.

“AMD Distribution Agreement” means that AMD Distribution Agreement dated as of June 30, 2003 between AMD and the Company.

“AMD Guaranteed Obligations” is defined in Section 11.1.

“**AMD Guaranty**” is defined in Section 11.1.

“**AMD Initial Contributed Assets**” means the AMD Pre-Closing Contributed Assets (as defined in the Contribution Agreement) and the AMD Closing Date Contributed Assets (as defined in the Contribution Agreement).

“**AMD Manager**” means any of the Managers designated by AMD Member to serve on the Board of Managers in accordance with Section 7.2.

“**AMD Manager Claim**” is defined in Schedule B.

“**AMD Member**” is defined in the preamble.

“**AMD Privileged Material**” is defined in Schedule B.

“**AMD Transaction**” is defined in Section 7.16.2(b).

“**Annual Budget**” is defined in Section 8.1.1.

“**Applicable Law**” means, with respect to a Person, any domestic or foreign, national, federal, territorial, state or local constitution, statute, law (including principles of common law), treaty, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, legally binding directive, judgment, decree or other requirement or restriction of any arbitrator or Governmental Authority applicable to such Person or any of its Affiliates or any of their respective properties, assets, officers, directors, employees, consultants or agents (in connection with such officer’s, director’s, employee’s, consultant’s or agent’s activities on behalf of such Person or any of its Affiliates).

“**Assignee**” means any Person (a) to whom a Member (or assignee thereof) Transfers all or any part of its Economic Interest in the Company in accordance with this Agreement, and (b) which has not been admitted to the Company as a Substitute Member pursuant to Section 9.8 of this Agreement.

“**Audit Year**” is defined in Section 5.1.1(a).

“**Black-Scholes Value**” is defined in Section 7.16.1.

“**Board of Managers**” means, at any time, the Board of Managers designated in accordance with Section 7.2.

“**Breach**” is defined in Section 10.6.

“**Breach Convertible Note**” is defined in Section 10.6.1(b).

“**Breaching Member**” is defined in Section 10.6.

“**Breaching Member’s Amount**” is defined in Section 10.6.1(b).

“**Business**” is defined in Section 7.7.2(c).

“**Business Day**” means any day other than a day on which commercial banks in California or Tokyo are required or authorized to be closed.

“**Capex**” means any expenditures in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations in accordance with GAAP), of the Company and each of the other Company Entities, collectively; *provided, however*, that any such expenditure that is less than five thousand dollars (U.S.\$5,000) shall not be included in the determination of Capex.

“**Capital Account**” means the Capital Account maintained for each Member on the Company’s books and records in accordance with the following provisions:

(1) To each Member’s Capital Account there shall be added (a) such Member’s Capital Contributions, (b) such Member’s allocable share of Net Profits and any items in the nature of income or gain that are specially allocated to such Member pursuant to Article 6 hereof or other provisions of this Agreement and (c) the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member.

(2) From each Member’s Capital Account there shall be subtracted (a) the amount of (i) cash and (ii) the Gross Asset Value of any Company Assets (other than cash) distributed to such Member pursuant to any provision of this Agreement in its capacity as a Member (for the avoidance of doubt, any payment to a Member pursuant to the terms of any Member Debt Financing or other debt instrument, or any payment pursuant to any license, consulting, services, subcontracting, lease or other agreement between the Company and such Member or any Affiliates of such Member shall not be treated as a “distribution”), (b) such Member’s allocable share of Net Losses and any other items in the nature of expenses or losses that are specially allocated to such Member pursuant to Article 6 or other provisions of this Agreement, and (c) liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member.

(3) In the event any Interest in the Company is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Interest.

(4) In determining the amount of any liability for purposes of subsections (1) and (2) of this definition, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(5) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations. In the event that the Board of Managers shall determine that it is prudent to modify the manner in which the Capital Accounts, or any additions or subtractions thereto, are computed in order to comply with such Regulations, the Board of Managers may make such modification, *provided* that it is not likely to have a material effect on the amounts distributable

to any Member pursuant to Article 10 hereof upon the dissolution of the Company. The Board of Managers shall also make (a) any adjustments that are necessary or appropriate, in the absence of guidance under applicable Regulations, to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (b) any appropriate modifications in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Sections 1.704-1(b) and 1.704-2. Upon the conversion of any Convertible Note, the Members' Capital Accounts shall be adjusted in accordance with the requirements of the Code and Regulations.

"Capital Contributions" means, with respect to any Member, the total amount of cash and the initial Gross Asset Value of property (other than cash) contributed to the capital of the Company by such Member, whether as a Capital Contribution of Contributed Assets or as a Capital Contribution of other assets.

"Cash" means cash and cash equivalents determined by the Company in good faith consistent with GAAP.

"Certificate" is defined in Section 1.1.

"Chairman of the Board" is defined in Section 7.5.

"Change in Control" shall be deemed to have occurred, with respect to AMD or Fujitsu, when:

(1) Any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of shares representing more than fifty percent (50%) of the combined voting power of the then outstanding securities entitled to vote generally in elections of directors of AMD or Fujitsu, as the case may be (the **"Voting Stock"**);

(2) AMD or Fujitsu (A) consolidates with or merges into any other Person or any other Person merges into AMD or Fujitsu, and in the case of any such transaction, the outstanding common stock of AMD or Fujitsu, as the case may be, is changed or exchanged into other assets or securities as a result, unless the stockholders of AMD or Fujitsu, as the case may be, immediately before such transaction own, directly or indirectly immediately following such transaction, more than fifty percent (50%) of the combined voting power of the outstanding voting securities of the corporation resulting from such transaction in substantially the same proportion as their ownership of the Voting Stock immediately before such transaction, or (B) conveys, transfers or leases all or substantially all of its assets to any Person; or

(3) Any time Continuing Directors do not constitute a majority of the Board of Directors of AMD or Fujitsu, as the case may be (or, if applicable, a successor Person to AMD or Fujitsu, as the case may be).

"Chief Executive Officer" is defined in Section 7.12.1.

“**Chief Financial Officer**” is defined in Section 7.12.3.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

“**Company**” is defined in the preamble.

“**Company Accountant**” shall mean initially Ernst & Young LLP or such other independent accounting firm as appointed from time to time by the Board of Managers.

“**Company Assets**” means all direct and indirect rights and interests in real and personal property owned by the Company from time to time, and shall include both tangible and intangible property (including Cash).

“**Company Correlative Item**” is defined in Section 6.4.4(b).

“**Company Entity**” means the Company, or any of its directly or indirectly majority owned subsidiaries (whether organized as corporations, limited liability companies or other legal entity).

“**Company Minimum Gain**” has the meaning set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d)(1) for the phrase “partnership minimum gain.”

“**Company Section 482 Allocation**” is defined in Section 6.4.4(a).

“**Company Transaction**” is defined in Section 7.16.2(a).

“**Confidential Information**” is defined in Section 7.19.1

“**Continuing Director**” means, solely with respect to AMD or Fujitsu, at any date, a member of AMD’s or Fujitsu’s Board of Directors, as the case may be, (i) who was a member of such board on June 30, 2003 or (ii) who was nominated or elected by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or whose election to the such board was recommended or endorsed by at least a majority of the directors who were Continuing Directors at the time of such nomination or election or such lesser number comprising a majority of a nominating committee comprised of independent directors if authority for such nominations or elections has been delegated to a nominating committee whose authority and composition have been approved by at least a majority of the directors who were Continuing Directors at the time such committee was formed.

“**Contributed Assets**” means the AMD Contributed Assets and the Fujitsu Contributed Assets as such terms are defined in the Contribution Agreement.

“**Contribution Agreement**” means the Contribution and Assumption Agreement dated as of June 30, 2003 among the Company, AMD and Fujitsu.

“**Convertible Note**” is defined in Section 4.3.2(d).

“**Conversion Eligibility Date**” is defined in Section 4.3.2(d).

“**Core Business**” is defined in Section 7.8.1(b).

“**Curative Distribution**” shall mean an amount, which shall be determined with respect to each Fiscal Year of the Company and which shall be payable to one of the Members in accordance with Section 5.1.1(b). The amount of the Company’s Curative Distribution for any Fiscal Year shall mean the additional amount necessary to distribute to one of the Members in order that the Adjusted Tax Liability Distribution Amount made to one of the Members in respect of such Fiscal Year and the sum of the Adjusted Tax Liability Distribution Amount and the Curative Distribution made to the other Member in respect of such Fiscal Year shall be in the same ratio as the Members’ respective Percentage Interests for such Fiscal Year (the “**Target Ratio**”); provided, however, that if the Members’ respective Percentage Interests vary during such Fiscal Year, the Target Ratio for such Fiscal Year shall mean the ratio of the Members’ respective “book” items (within the meaning of Code Section 704(b)) corresponding to the tax items in respect of which the Tax Liability Distribution was made.

“**Cure Period**” means, with respect to a Breach, a period of one hundred (100) days starting from the date such Breach occurs, during which the Breaching Member shall have the right to cure the Breach by either funding its Breaching Member’s Amount (plus reasonable interest thereon) or by purchasing the Breach Convertible Note from the Non-Breaching Member at a price equal to the principal, interest and any other amounts outstanding thereunder (and, upon such a purchase, the Breach Convertible Note shall cease to be convertible); provided, however, that each Breaching Member shall have the right so to cure its Breaches two (2) times, and after the second such cure of a Breach, the Cure Period shall no longer apply with respect to any Breach by such Non-Breaching Member. For the avoidance of doubt, the curing of multiple Breaches at any one (1) time shall only constitute one (1) exercise of the right to cure.

“**DCF Valuation**” is defined in Section 9.3.1.

“**Depreciation**” means, for each Fiscal Year of the Company or other period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; *provided, however*, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board of Managers.

“**DGCL**” means the General Corporation Law of Delaware, as amended.

“**Disclosing Party**” is defined in Section 7.19.1.

“**Discounted Black-Scholes Value**” is defined in Section 7.16.1.

“**Distribution Agreements**” is defined in Section 8.9.

“**Distributor**” means either AMD in its capacity as a distributor of Products under the AMD Distribution Agreement or Fujitsu in its capacity as a distributor of Products under the Fujitsu Distribution Agreement, as applicable.

“**Economic Interest**” means a Person’s right to share in allocations of Net Profits, Net Losses and other items of income, gains, losses, deductions and credits hereunder and to receive distributions from, the Company as set forth in this Agreement, but does not include any other rights of a Member including, without limitation, the right to vote or to participate in the management of the Company, or, except as specifically provided in this Agreement or required under the Act, any right to information concerning the business and affairs of the Company.

“**Excess Allocation**” is defined in Section 5.1.4.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Executive Officers**” means all Officers directly reporting to the Chief Executive Officer.

“**FASL (Japan)**” means Fujitsu AMD Semiconductor Limited, a corporation organized under the laws of Japan, and, following the consummation of the transactions contemplated by the Contribution Agreement, a wholly owned subsidiary of the Company that will have its name changed to FASL JAPAN Limited.

“**FASL (Japan) Non-Manufacturing Organization**” means the formal or informal group, division or other organization within FASL (Japan) primarily conducting research and development of semi-conductor products (as well as related marketing and administrative activities) which, as of the Launch Date will operate at leased facilities located in Tokyo and Nagoya.

“**Final Bid End-Date**” is defined in Section 9.3.9(d).

“**Financing Note**” is defined in Section 9.3.8.

“**Financing Shortfall**” is defined in Section 4.3.1.

“**Financing Shortfall Amount**” is defined in Section 4.3.1.

“**Financing Shortfall Notes**” is defined in Section 4.3.2(d).

“**Fiscal Year**” is defined in Section 7.10.1.

“**FMM**” means Fujitsu Microelectronics (Malaysia) Sdn. Bhd.

“**4-Year Fixed Financial Support Plan**” means the first sixteen (16) quarters of the plan attached hereto as **Exhibit C**. In the event that the Launch Date is delayed for any

reason beyond the fiscal quarter of the calendar year that is the first quarter of the 4-Year Fixed Financial Support Plan as set forth on **Exhibit C**, the dates on the 4-Year Fixed Financial Support Plan will be adjusted so that such first quarter thereof will be the fiscal quarter in which the Launch Date falls (but, for the avoidance of doubt, the amounts contained therein will not change).

“4-Year Operations Plan” is defined in Section 8.1.1.

“4-Year Period” means the four (4)-year period covered in the 4-Year Fixed Financial Support Plan.

“Fujitsu” is defined in the preamble.

“Fujitsu Distribution Agreement” means that Fujitsu Distribution Agreement dated as of June 30, 2003 between Fujitsu and the Company.

“Fujitsu Guaranteed Obligations” is defined in Section 12.1.

“Fujitsu Guaranty” is defined in Section 12.1.

“Fujitsu Manager” means any of the Managers designated by Fujitsu to serve on the Board of Managers in accordance with Section 7.2.

“Fujitsu Manager Claim” is defined in Schedule B.

“Fujitsu Member” is defined in the preamble.

“Fujitsu Privileged Material” is defined in Schedule B.

“Funding Member” means a Member that provides financing for (i) Pull-Ins pursuant to and in accordance with Section 4.3.2(c), or (ii) Financing Shortfalls pursuant to and in accordance with Section 4.3.2(d), as applicable.

“Funding Member Pull-In Note” is defined in Section 4.3.2(c).

“G&A” means the general and administrative expenses (including any fees paid to Persons that are not Company Entities in respect of general and administrative activities performed for the benefit of any Company Entity) of the Company and the other Company Entities, collectively, computed in accordance with GAAP.

“GAAP” means generally accepted accounting principles in the United States, consistently applied.

“Governmental Authority” means any foreign, domestic, national, federal, territorial, state or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(1) The initial Gross Asset Value of the assets contributed to the Company by AMD Member and Fujitsu Member in connection with the contribution of the Contributed Assets shall be the gross fair market value of such assets, which the parties agree is equal to the book value of such Contributed Assets as determined in accordance with GAAP and shall be set forth on **Exhibit A** as soon as practicable after the Launch Date. The initial Gross Asset Value of any asset contributed by a Member to the Company that is not a Contributed Asset shall be the gross fair market value of such asset as determined by the Board of Managers and the contributing Member.

(2) The Gross Asset Value of all Company Assets immediately prior to the occurrence of any event described in subsections (a) through (d) hereof shall be adjusted to equal their respective gross fair market values, in accordance with the applicable valuation provisions of this Agreement, or if there are no such provisions, as determined by the Board of Managers using such reasonable method of valuation as the Board of Managers may adopt, upon the occurrence of the following events and in accordance with the applicable Regulations:

(a) the acquisition of an additional Interest in the Company (other than in connection with the execution of this Agreement) by a new or existing Member in exchange for more than a de minimis Capital Contribution (including the acquisition of an additional Interest by an existing Member upon conversion of a Convertible Note in accordance with Section 4.3.2(d)), if the Board of Managers reasonably determines that such adjustment is necessary or appropriate to reflect the relative Economic Interests of the Members in the Company;

(b) the distribution by the Company to a Member of more than a de minimis amount of Company Assets as consideration for an Economic Interest or Interest in the Company, if the Board of Managers reasonably determines that such adjustment is necessary or appropriate to reflect the relative Economic Interests of the Members in the Company;

(c) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and

(d) at such other times as the Board of Managers shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2.

(3) The Gross Asset Value of any Company Asset distributed to a Member shall be the gross fair market value of such Company Asset on the date of distribution as determined by the Board of Managers.

(4) The Gross Asset Values of Company Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Company Assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations

Section 1.704-1(b)(2)(iv)(m); *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this subsection (4) of this definition to the extent that the Board of Managers reasonably determines that an adjustment pursuant to subsection (2) of this definition above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (4) of this definition.

(5) If the Gross Asset Value of a Company Asset has been determined or adjusted pursuant to subsections (1), (2) or (4) of this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such Company Asset for purposes of computing Net Profits and Net Losses.

“**Guaranteed Percentage**” is defined in Section 4.1.2(a).

“**HR Council**” is defined in Section 7.15.

“**Indemnified Loss**” is defined in Section 7.11.1.

“**Indemnitee**” is defined in Section 7.11.1.

“**Initial Bid End-Date**” is defined in Section 9.3.9(c).

“**Initial Public Offering**” means a bona fide underwritten initial sale of common stock (or other securities) of a Person pursuant to a registration statement that is declared effective by the SEC.

“**Investment Advisers Act**” means the Investment Advisers Act of 1940, as amended.

“**Investment Company Act**” means the Investment Company Act of 1940, as amended.

“**IP Contribution Agreement**” means the Intellectual Property Contribution and Ancillary Matters Agreement dated as of June 30, 2003 among Fujitsu, AMD and the Company.

“**IPO Valuation**” means the Valuation described in Section 9.3.1.

“**IT**” is defined in Section 7.13.

“**IT Steering Committee**” is defined in Section 7.13.

“**Joint Territory**” has the meaning set forth in the AMD Distribution Agreement and in the Fujitsu Distribution Agreement.

“**JV1**” means the wafer fabrication facility currently for 0.35 micron products located at Industrial Site 6, Monden-machi, Aizuwakamatsu-shi, Fukushima, Japan.

“**JV2**” means the wafer fabrication facility currently for 0.23 micron products located at Industrial Site 6, Monden-machi, Aizuwakamatsu-shi, Fukushima, Japan.

“**JV3**” means the wafer fabrication facility currently for 0.18 micron and 0.13 micron products located at Industrial Site 2, Takaku, Aizuwakamatsu-shi, Fukushima, Japan.

“**Launch Date**” is defined in the preamble.

“**Liquidators**” is defined in Section 10.5.1.

“**Managers**” means at any time the individuals elected in accordance with Section 7.2 to serve on the Board of Managers.

“**Material Breach**” means a Breach of greater than seventy-five million dollars (U.S.\$75,000,000) in any one occurrence or which, together with all previous Breaches by the applicable Member, exceeds seventy-five million dollars (U.S.\$75,000,000) in the aggregate.

“**Material Company Entity**” means the Company and each Company Entity that owns (directly or indirectly) greater than twenty percent (20%) of the fair market value of the assets of the Company Entities taken as a whole.

“**Member**” means a Person owning a Membership Interest, including any Substitute Member.

“**Member Correlative Item**” is defined in Section 6.4.4(a).

“**Member Debt Financing**” means a loan to the Company directly from a Member or any of its Affiliates.

“**Member Guarantee**” means a guarantee by a Member or its Affiliates issued to a Person other than a Member or its Affiliates guaranteeing any lease or debt financing provided to a Company Entity by such Person.

“**Member Guaranteed Financing**” means any lease or debt financing from a Person other than a Member or its Affiliates that is guaranteed by a Member Guarantee.

“**Member Minimum Gain**” means “partner nonrecourse debt minimum gain” as defined in Regulations Section 1.704-2(i)(2).

“**Member Nonrecourse Debt**” means “partner nonrecourse debt” as set forth in Regulations Section 1.704-2(b)(4).

“**Member Section 482 Allocation**” is defined in Section 6.4.4(b).

“**Member Nonrecourse Deductions**” means “partner nonrecourse deductions” as set forth in Regulations Section 1.704-2(i).

“**Membership Interest**” or “**Interest**” means the entire ownership interest of a Member in the Company at any particular time, including without limitation, the Member’s Economic Interest, any and all rights to vote and otherwise participate in the Company’s affairs, and the rights to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement. A Membership Interest may be expressed as a number of Units.

“Net Profits” or “Net Losses” means, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such year or period determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a) (1) shall be included in taxable income or loss), with the following adjustments:

(1) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition shall be added to such taxable income or loss;

(2) Any expenditure of the Company described in Code Section 705(a)(2)(B) or treated as a Code Section 705(a)(2)(B) expenditure pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this subsection (2) of this definition, shall be subtracted from such taxable income or loss;

(3) Gain or loss resulting from any disposition of Company Assets where such gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Company Assets disposed of, notwithstanding that the adjusted tax basis of such Company Assets differs from its Gross Asset Value;

(4) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year;

(5) To the extent an adjustment to the adjusted tax basis of any asset included in Company Assets pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member’s Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for the purposes of computing Net Profits and Net Losses;

(6) If the Gross Asset Value of any Company Asset is adjusted in accordance with subsection (2) or subsection (3) of the definition of “Gross Asset Value,” the amount of such adjustment shall be taken into account in the taxable year of such adjustment as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses; and

(7) Notwithstanding any other provision of this definition, any items of income, gain, loss or deduction that are specially allocated pursuant to Sections 6.2, 6.4.4 and 6.4.6 shall not be taken into account in computing Net Profits or Net Losses. The amount of items of income, gain, loss and deduction available to be specially allocated shall be determined using principles analogous to those set forth in this definition.

The Members acknowledge and agree that for financial accounting purposes the results of the Company's operations will be reported in accordance with GAAP and that Net Profits, Net Losses, and the items taken into account in determining Net Profits and Net Losses, for any Fiscal Year shall be taken into account for financial accounting purposes only if, when and to the extent required or permitted to be taken into account in accordance with GAAP and that GAAP may require or permit that other items be taken into account.

"Non-Breaching Member" is defined in Section 10.6.

"Non-Breaching Member's Amount" is defined in Section 10.6.1(a).

"Non-Competition Agreement" means the Non-Competition Agreement dated as of June 30, 2003 among the Company, AMD and Fujitsu.

"Non-Convertible Note" is defined in Section 4.3.2(d).

"Non-Funding Member" means a Member that does not provide financing for (i) Pull-Ins in accordance with Section 4.3.2(c) or (ii) Financing Shortfalls in accordance with Section 4.3.2(d), as applicable.

"Non-Funding Member Pull-In Note" is defined in Section 4.3.2(c).

"Nonrecourse Deductions" has the meaning set forth in Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

"Offer Commencement Date" is defined in Section 9.3.9(b).

"Offer Notice" is defined in Section 9.3.5.

"Officer" is defined in Section 7.12.3.

"Operations Shortfall" occurs either (a) when the Projected Ending Cash Balance for any fiscal quarter is less than one hundred million dollars (U.S.\$100,000,000), or (b) in the event that the Projected Ending Cash Balance for any fiscal quarter is greater than one hundred million dollars (U.S.\$100,000,000), when the Company reasonably expects that Cash will be reduced to zero dollars (U.S.\$0) at any time during such quarter.

"Operations Shortfall Amount" is either (a) in the event that an Operations Shortfall occurs under clause (a) of the definition thereof with respect to any given fiscal quarter, the amount by which the Projected Ending Cash Balance determined pursuant to Section 4.4.1 for such quarter is less than one hundred million dollars (U.S.\$100,000,000), or (b) in the event that an Operations Shortfall occurs under clause (b) of the definition thereof with respect to any given fiscal quarter, the amount reasonably expected to be necessary to maintain a balance of Cash in excess of zero dollars (U.S.\$0) for the rest of such quarter.

"Original Agreement" is defined in the preamble.

“**Parent Forecasts**” is defined in Section 8.9.2.

“**Participate**” shall include (a) participation in conferences, meetings or Proceedings with any Governmental Authority, the subject matter of which includes an item for which a Member may have liability pursuant to Article X of the Contribution Agreement, (b) participation in appearances before any court or tribunal, the subject matter of which includes an item for which a party may have liability pursuant to Article X of the Contribution Agreement, and (c) with respect to matters described in the preceding clauses (a) and (b), participation in the submission and determination of the content of the documentation, protests, memoranda of fact and law, and briefs, and the conduct of oral arguments and presentations.

“**Percentage Interest**” means, with respect to a Member holding one or more Units, its Interest in the Company as determined by dividing the number of Units owned by such Member by the total number of Units of the Company then outstanding as specified in **Exhibit A** attached hereto, as such exhibit may be modified or supplemented from time to time in accordance with the terms of this Agreement.

“**Percentage Sold**” is defined in Section 9.3.8(c).

“**Person**” means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, other legal entity or Governmental Authority.

“**Potential Acquirers**” is defined in Section 9.3.9(a).

“**Proceeding**” means actions, suits, hearings, arbitrations, proceedings (public or private), investigations, examinations, audits or claims brought by or against any Governmental Authority.

“**Products**” is defined in the AMD Distribution Agreement and the Fujitsu Distribution Agreement.

“**Projected Ending Cash Balance**” means the Company’s projected ending balance of Cash (on a consolidated basis) determined by the Company for any given fiscal quarter, calculated using the Company’s then-current Rolling Quarterly Plan and related cash flow statements, each prepared in a manner consistent with the Company’s other financial statements and GAAP, *provided* that, with respect to determining an Operations Shortfall, such calculation of the projected ending balance will (i) exclude principal payments made by the Company with respect to any debt incurred to cover Financing Shortfalls and, for the avoidance of doubt, the amount of such payments shall be deemed to be included in such projected ending balance of Cash, and (ii) include distributions made or to be made pursuant to Sections 5.1.1(a), 5.1.1(b) and 5.1.1(c) (without regard to any limitations therein based on inadequacy of available cash).

“**Public Offering**” is defined in Section 9.3.10.

“**Pull-In Note**” is defined in Section 4.3.2(c).

“**Pull-Ins**” is defined in Section 4.3.2(c).

“**Qualified Valuator**” means a reputable, nationally recognized investment bank, accounting firm or valuation specialist that is not (a) an Affiliate of a Member or of an Affiliate of a Member or (b) an Affiliate of any Company Entity or of an Affiliate of any Company Entity.

“**Quarterly Beginning Plan**” or “**QBP**” is defined in Section 8.9.

“**Quarterly Beginning Plan Template**” or “**QBP Template**” is defined in Section 8.9.1.

“**R&D**” means expenditures in respect of research and development activities (including any fees paid to any Persons that are not Company Entities in respect of research and development activities performed for the benefit of any Company Entity) of or by the Company and each of the other Company Entities, collectively, computed in accordance with GAAP.

“**Receiving Party**” is defined in Section 7.19.1.

“**Reference Rate**” is defined in the definition of “Tax Distribution Rate.”

“**register,**” “**registered,**” and “**registration,**” as those terms are used in Section 9.3.10, refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

“**Regulations**” means temporary and final Treasury Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding Treasury Regulations).

“**Regulatory Allocations**” is defined in Section 6.2.8.

“**Responsible Party**” is defined in Section 7.11.6.

“**Revolver**” means the revolving bank credit facility of up to one hundred fifty million dollars (U.S.\$150,000,000) that is guaranteed on a pro rata basis by AMD and Fujitsu based on the respective Percentage Interests of their respective Affiliate Members at the time the bank facility is established.

“**Right of First Refusal**” is defined in Section 9.3.6.

“**Rolling Quarterly Plan**” is defined in Section 8.1.1.

“**Safe Harbors**” is defined in Section 9.10.

“**Sale End-Date**” is defined in Section 9.3.9(e).

“**SEC**” means the Securities and Exchange Commission.

“**Secondment Agreement**” means that Secondment and Transfer Agreement dated as of June 30, 2003 by and between FASL (Japan) and Fujitsu.

“**Secretary**” is defined in Section 7.12.3.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Selling Members**” is defined in Section 9.3.10(b).

“**Special Vote of the Board of Managers**” or “**Special Vote**” means the affirmative vote or consent of the Board of Managers, including the affirmative vote of at least fifty percent (50%) of then Fujitsu Managers for so long as Fujitsu Managers are on the Board of Managers.

“**Substitute Member**” means any Person (a) to whom a Member (or Assignee thereof) Transfers all or any part of its Interest in the Company, and (b) which has been admitted to the Company as a Substitute Member pursuant to Section 9.8.

“**Target**” is defined in Section 8.8.

“**Target Ratio**” is defined in the definition of “Curative Distribution.”

“**Tax**” or “**Taxes**” means all taxes, levies, imposts and fees imposed by any Governmental Authority (domestic or foreign) of any nature including but not limited to federal, state, local or foreign net income tax, alternative or add-on minimum tax, profits or excess profits tax, franchise tax, gross income, adjusted gross income or gross receipts tax, employment related tax (including employee withholding or employer payroll tax, FICA or FUTA), real or personal property tax or ad valorem tax, sales or use tax, excise tax, stamp tax or duty, any withholding or back up withholding tax, value added tax, severance tax, prohibited transaction tax, premiums tax, occupation tax, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority (domestic or foreign) responsible for the imposition of any such tax.

“**Tax Distribution Rate**” shall mean thirty-six percent (36%); provided that (i) such thirty-six percent (36%) rate shall be adjusted upward or downward from time to time if the top-bracket U.S. federal income tax rate applicable to ordinary income of corporations (the “**Reference Rate**”) is changed after the date hereof so that the Tax Distribution Rate shall at all times be equal to one (1) percentage point more than the Reference Rate; and (ii) notwithstanding anything else in this definition, if the activities of the Company shall give rise to state tax liability for the Members in any State of the United States other than California and Texas, the Members shall negotiate in good faith to agree on an appropriate adjustment in respect of such increased tax liability. The Members intend that if the Reference Rate is ever changed such that a blended rate applies to a Member in respect of a taxable year of such Member, the Tax Distribution Rate in respect of such Member for such taxable year shall be equal to one (1) percentage point more than such blended rate.

“Tax Liability Distributions” shall refer to any distribution made to a Member pursuant to Section 5.1.1(a). All Tax Liability Distributions shall be made in cash. The table below sets forth the correspondence between the Tax Liability Distributions made by the Company to the Members with respect to their respective estimated and final tax payments and the related Fiscal Year of the Company. References in the table to “year x” refer to any calendar year, and references to “year x + 1” refer to the subsequent calendar year. In the event the taxable year of the Company no longer corresponds to that of the AMD Member, the table shall be appropriately adjusted. Tax Liability Distributions made to a Member with respect to a particular Fiscal Year of the Company shall also include distributions of any positive Tax Liability Distribution Adjustment made to a Member with respect to such Fiscal Year. Tax Liability Distributions with respect to any Fiscal Year will be reduced by the amount of any negative Tax Liability Distribution Adjustment with respect to a prior Fiscal Year (but only to the extent that any such negative Tax Liability Distribution Adjustment has not been previously applied as a reduction pursuant to this sentence).

Tax Liability Distributions of Fujitsu Member in Respect of:	Fiscal Year of Company (ends the last Sunday in December, year x)	Tax Liability Distributions of AMD Member in respect of:	Fiscal Year of Company (ends the last Sunday in December, year x)
First quarter estimated (payable July 15, year x)	Fiscal Year ending in year x	First quarter estimated (payable April 15, year x)	Fiscal Year ending in year x
Second quarter estimated (payable September 15, year x)	Fiscal Year ending in year x	Second quarter estimated (payable June 15, year x)	Fiscal Year ending in year x
Third quarter estimated (payable December 15, year x)	Fiscal Year ending in year x	Third quarter estimated (payable September 15, year x)	Fiscal Year ending in year x
Fourth quarter estimated (payable March 15, year x + 1)	Fiscal Year ending in year x	Fourth quarter estimated (payable December 15, year x)	Fiscal Year ending in year x
Final payment for Fujitsu Member taxable year ended March 31, year x + 1 (payable June 15, year x + 1)	Fiscal Year ending in year x	Final payment for AMD Member taxable year ended last Sunday in December, year x (payable March 15, year x + 1)	Fiscal Year ending in year x

“Tax Liability Distribution Adjustment” shall mean an amount, which may be either positive or negative, which shall be determined with respect to each Member for each Fiscal Year as the excess of (i) the *product* of the Tax Distribution Rate for such Fiscal Year

multiplied by such Member's allocable share of the Company's taxable income as reflected on such Member's final or, if applicable, amended Schedule K-1 to IRS Form 1065 for such Fiscal Year, *minus* the amount of tax credits allocated to such Member on such Schedule K-1, over (ii) the amount of such Member's Tax Liability Distributions previously made with respect to such Fiscal Year.

"Tax Matters Partner" shall mean AMD Member.

"Technology" has the meaning set forth in the AMD Distribution Agreement and in the Fujitsu Distribution Agreement.

"Technology Roadmap" means the Company's written technology and product roadmap, as approved from time to time by the appropriate Officer or Officers of the Company.

"Transfer" (including, with correlative meaning, the term **"Transferred"**) means, with respect to any Membership Interest in the Company or portion thereof, a sale, conveyance, exchange, assignment, pledge, encumbrance, gift, bequest, hypothecation or other transfer or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by operation of law), or an agreement to do any of the foregoing.

"Transferred Employees" is defined in Section 3.2.1 of the Secondment Agreement and shall include all other employees transferred by Fujitsu and its Affiliates to a Company Entity.

"Transfer Shares" is defined in Section 9.3.5.

"Transferring Member" is defined in Section 9.3.1.

"Unit" means, with respect to a Membership Interest, a fractional, undivided share of such Membership Interest issued pursuant to Article 3 of this Agreement. A Membership Interest may include a fractional Unit. As of the date hereof, the Units are held by the Members in accordance with **Exhibit A**, which Exhibit will be updated from time to time in accordance with the terms of this Agreement.

"Valuation Amount" is defined in Section 9.3.5.

"Valuation Request" is defined in Section 9.3.1.

"Valuations" is defined in Section 9.3.1.

"Variances" is defined in Section 8.8.

"Voting Stock" is defined in the definition of "Change in Control."

ARTICLE 3.
CAPITAL; CAPITAL ACCOUNTS AND MEMBERS

3.1 Initial Capital Contributions of Members

3.1.1 AMD Member.

(a) The Members acknowledge and agree that, pursuant to (i) the Capital Contribution Agreement dated as of May 16, 2003 between AMD Member and the Company, (ii) the Contribution Agreement and (iii) the IP Contribution Agreement, as of the date hereof, AMD Member has contributed (or with respect to intellectual property rights has caused its Affiliates to contribute on its behalf) to the Company the AMD Initial Contributed Assets, the Company has assumed certain liabilities of AMD Member and AMD pursuant to the Contribution Agreement, and these transactions shall be treated by AMD Member and the Company for federal income tax purposes as constituting a capital contribution by AMD Member of the AMD Initial Contributed Assets, as further set forth on **Exhibit A**.

(b) AMD Member shall, pursuant to and subject to the conditions set forth in the Contribution Agreement and not later than July 18, 2003, contribute to the Company the AMD Post-Closing Contributed Assets (as defined in the Contribution Agreement). The Members acknowledge and agree that this transaction shall be treated by AMD Member and the Company for federal income tax purposes as constituting a capital contribution by AMD Member of the AMD Post-Closing Contributed Assets.

3.1.2 Fujitsu Member.

(a) The Members acknowledge and agree that, pursuant to (i) the Contribution Agreement and (ii) the IP Contribution Agreement, as of the date hereof, Fujitsu Member has contributed (or with respect to intellectual property rights has caused its Affiliates to contribute on its behalf) to the Company the Fujitsu Closing Date Contributed Assets (as defined in the Contribution Agreement), the Company has assumed certain liabilities of Fujitsu Member and Fujitsu pursuant to the Contribution Agreement, and these transactions shall be treated by Fujitsu Member and the Company for federal income tax purposes as constituting a capital contribution by Fujitsu Member of the Fujitsu Closing Date Contributed Assets, as further set forth on **Exhibit A**.

(b) Fujitsu Member shall, pursuant to and subject to the conditions set forth in the Contribution Agreement and not later than July 18, 2003, contribute to the Company the Fujitsu Post-Closing Contributed Assets (as defined in the Contribution Agreement). The Members acknowledge and agree that this transaction shall be treated by Fujitsu Member and the Company for federal income tax purposes as constituting a capital contribution by Fujitsu Member of the Fujitsu Post-Closing Contributed Assets.

3.1.3 Capital Account Balances. The names, addresses, Capital Account balances of each Member (after giving effect to the transactions described in Sections 3.1.1(a) and 3.1.2(a)), Percentage Interests of, and number of Units owned by, the Members are as set forth on **Exhibit A**. Upon the completion of the contribution of the AMD Post-Closing

Contributed Assets as described in Section 3.1.1(b) and the contribution of the Fujitsu Post-Closing Contributed Assets as described in Section 3.1.2(b), the Board of Managers shall cause **Exhibit A** to be updated with respect to both Members to reflect such contribution. The Capital Account balances set forth on **Exhibit A** immediately after **Exhibit A** is updated to reflect the contribution of the AMD Post-Closing Contributed Assets and the Fujitsu Post-Closing Contributed Assets reflect the Members' final determination as to the amount of each Member's Capital Contribution of its respective Contributed Assets. The amount of a Member's Capital Contribution attributable to its respective Contributed Assets immediately after all contributions have been made in accordance with this Section 3.1 shall not subsequently be altered, amended or modified, and Depreciation with respect to all Contributed Assets shall be determined based on the Gross Asset Values of such Contributed Assets reflected in such Capital Contributions unless and until the Gross Asset Values of such Contributed Assets are subsequently adjusted pursuant to the definition of "Gross Asset Value" set forth herein.

3.2 Additional Capital Contributions by Members

Except as provided in Section 3.1, no Member shall be required to make any additional Capital Contributions to the Company.

3.3 Capital Accounts

A Capital Account shall be established and maintained by the Company for each Member in accordance with the terms of this Agreement.

3.4 Member Capital

Except as otherwise provided in this Agreement or with the prior vote of the Board of Managers including a Special Vote of the Board of Managers for so long as Fujitsu Member's Percentage Interest is at least twenty percent (20%): (a) no Member shall demand or be entitled to receive a return of or interest on any portion of its Capital Contributions or balance in its Capital Account; (b) no Member shall withdraw any portion of its Capital Contributions or receive any distributions from the Company as a return of capital on account of such Capital Contributions; and (c) the Company shall not redeem or repurchase the Membership Interest of any Member, provided that any such return, distribution or redemption that is permitted hereunder shall be pro rata based upon the Members' respective Percentage Interests.

3.5 Liability of Members

Except as otherwise required by any non-waivable provision of the Act or other Applicable Law and except as provided in this Agreement or other agreements between the Company and one or more Members or their Affiliates, no Member shall be personally liable in any manner whatsoever for any debt, liability or other obligation of the Company, whether such debt, liability or other obligation arises in contract, tort, or otherwise solely by reason of being a Member.

ARTICLE 4.
FINANCING OF THE COMPANY

4.1 Types of Financing

4.1.1 General. The Board of Managers shall be responsible for determining the type of financing required to fund the operations of the Company, which may include issuing equity to Members or through transactions in public or private markets, or incurring debt from Members or from public, private or bank markets with or without Member Guarantees; *provided, however*, that no Member Debt Financing or Member Guarantees shall affect a Member's respective Membership Interest except upon the conversion of a Convertible Note in accordance with Section 4.3.2(d)(4) or if the terms of such financing include a conversion right and that right is exercised. In considering financing options and taking into account (i) the Members' obligations and the priority of financing methods for funding Financing Shortfalls in Section 4.3 and Operations Shortfalls in Section 4.4, (ii) the Company's right to seek financing through equity or other investments from third parties and (iii) the Company's Revolver, the Board of Managers shall seek any financing during the 4-Year Period in the following order of priority:

(a) lease and debt financing and other similar financing (such as factoring of receivables) from Persons other than Members or their Affiliates without Member Guarantees; then

(b) Member Guaranteed Financing on a pro rata basis based on Percentage Interests; then

(c) Member Debt Financing on a pro rata basis.

Notwithstanding the foregoing, in the event that one Member or its Affiliates is able to issue a Member Guarantee to a third party to procure its pro rata portion of any Member Guaranteed Financing, then (1) such Member or its Affiliates will be able to do so even if the other Member or its Affiliates is unable to do so and (2) such other Member or its Affiliates must provide Member Debt Financing for its pro rata portion of such financing. In such event, the terms of the Member Debt Financing will be consistent in all material respects with the terms of the Member Guaranteed Financing. Any Member Guaranteed Financing shall be on commercially reasonable terms and subject to the Board of Manager's consent, such consent to not be unreasonably withheld or delayed.

4.1.2 Member Guarantees. Unless the applicable guaranteeing Member or its Affiliates otherwise agrees:

(a) each Member Guarantee shall provide that:

(1) the maximum principal amount guaranteed thereunder does not exceed the product of (A) the maximum aggregate amount of the Member Guaranteed Financing and the corresponding Member Debt Financing (if any) being sought by and actually committed to the Company *multiplied by* (B) such Member's Percentage Interest at the time of issuance of the Member Guarantee; and

(2) the Person(s) seeking payment thereunder cannot seek an amount from a Member and its Affiliates in excess of such Member's Guaranteed Percentage of the amount outstanding under the Member Guaranteed Financing at the time such payment is sought. (For purposes of this Section 4.1.2(a)(2), "**Guaranteed Percentage**" means, with respect to any Member Guarantee, the percentage determined by the following calculation: (A) the maximum principal amount guaranteed thereunder (as determined in accordance with Section 4.1.2(a)(1)), *divided by* (B) the aggregate committed principal amount of the corresponding Member Guaranteed Financing.

(b) no Member or its Affiliates shall be required to issue a Member Guarantee with respect to any lease financing that has a life longer than four (4) years;

(c) with respect to a Member Guarantee issued with respect to a revolving credit facility or credit facility that allows for more than one borrowing, such Member Guarantee (i) shall not cover any amounts not drawn down that remain undrawn by the Company under such credit facility as of the last day of the 4-Year Period and (ii) will cover any amounts drawn down by the Company and remaining outstanding under such credit facility as of the last day of the 4-Year Period only to the extent such outstanding amounts are scheduled to be repaid in full by the Company in equal installments on no less than an annual basis to the Person(s) providing such financing during the 2-year period starting on the date that the 4-Year Period expires and ending on the date that is six (6) years from the Launch Date; and

(d) except with respect to financing provided in connection with Financing Shortfalls, no Member or its Affiliates shall be required to provide a Member Guarantee with respect to any financing to the Company with a term that is longer than four (4) years or that extends beyond the date that is six (6) years from the Launch Date.

4.1.3 Member Debt Financings. Each Member Debt Financing (a) shall be structured such that interest and principal payments thereon shall be scheduled on the same dates during each relevant fiscal quarter as each other Member Debt Financing and (b) unless the applicable Member or its Affiliates otherwise agrees, shall not have a term that is longer than four (4) years or extends beyond the date that is six (6) years from the Launch Date. Other than the Revolver or lease financings, any Member Debt Financing or Member Guaranteed Financing shall be in the form of an amortizing term loan.

4.2 Allocation of Financing Responsibility During the First 4-Year Period

During the 4-Year Period, AMD and Fujitsu shall or shall cause AMD Member and Fujitsu Member, respectively, to provide financing to the Company on a pro rata basis based on the respective Percentage Interests of AMD Member and Fujitsu Member, respectively, existing at the time each extension of credit is made, to the extent contemplated by and in accordance with (a) the 4-Year Fixed Financial Support Plan and (b) the provisions of Sections 4.1, 4.3 and 4.4. The 4-Year Fixed Financial Support Plan may only be amended with the written approval of both Fujitsu Member and AMD Member, which each such Member may grant or withhold in its sole discretion.

4.3 Financing Shortfalls

4.3.1 **Calculation.** If at any time during the 4-Year Period, the Company intends to spend an amount on (i) Capex or (ii) R&D and G&A (taken together), which, together with previous amounts spent for (i) Capex or (ii) R&D and G&A (taken together), exceeds the cumulative dollar limits for such category or categories, as the case may be, from the Launch Date through such time of determination set forth in the 4-Year Fixed Financial Support Plan, then a “**Financing Shortfall**” shall be deemed to occur. If a Financing Shortfall occurs, the Company shall (a) determine whether it has funds available to pay for such excess amount (the amount by which the Company determines its funds are insufficient to pay the excess being the “**Financing Shortfall Amount**”) and (b) shall promptly notify the Members of the occurrence of the Financing Shortfall and the Financing Shortfall Amount (if any). The calculation necessary to determine whether a Financing Shortfall has occurred and the Financing Shortfall Amount shall be made with reference to the respective line items in the most recent Company financial statements and any expenditures through such time of determination that will be included as such items in future financial statements. For purposes of this Section 4.3.1, the amount allocated to Capex for the third fiscal quarter of 2003 shall be increased by the amount that (a) the U.S.\$163.1 million allocated to Capex for the second fiscal quarter of 2003 exceeds (b) the amounts of actual Capex expended during the second fiscal quarter of 2003 with respect to the Business, *provided* that the Company shall promptly provide written notice to each Member demonstrating the calculation thereof.

4.3.2 **Funding Obligation.** In the event that a Financing Shortfall occurs and a Financing Shortfall Amount exists, then the Financing Shortfall Amount shall be funded in the following order of priority:

(a) *First*, debt financing from Persons other than the Members and their Affiliates (without Member Guarantees) will be solicited by the Company prior to seeking any Member Guaranteed Financing or Member Debt Financing;

(b) *Second*, if the financing option set forth in Section 4.3.2(a) is unavailable, the Company shall seek Member Guaranteed Financing, *provided, however*, that no Member shall be obligated to provide such Member Guarantee;

(c) *Third*, if the Financing Shortfall Amount is due to an acceleration of Capex from a subsequent Fiscal Year covered by the 4-Year Fixed Financial Support Plan and the financing options set forth in Sections 4.3.2(a) and (b) are unavailable, the Company may accelerate amounts to be financed by the Members or their respective Affiliates in the following Fiscal Year with respect to such Capex as set forth in the 4-Year Fixed Financial Support Plan (such accelerated amounts, “**Pull-Ins**”). Any such Pull-In will be financed on a pro rata basis based on the respective Percentage Interests of each Member at the time of the issuance of the Pull-In Note (as defined below); *provided, however*, that no Member or its Affiliates shall be obligated to provide its pro rata share of such Pull-In. If a Member or its Affiliates fails to fund its portion of any such Pull-In, the other Member or its Affiliates may elect to fund its portion and the Non-Funding Member’s portion of such Pull-In, and the Company will issue to the Funding Member two separate notes in the form attached hereto as **Exhibit D** (each a “**Pull-In**”).

Note”), each with a principal amount that reflects the amount of the Pull-In multiplied by the respective Member’s Percentage Interest at the time of the issuance of the Pull-In Note (the Pull-In Note attributable to the Non-Funding Member’s amount being the “**Non-Funding Member Pull-In Note**,” and the Pull-In Note attributable to the Funding Member’s amount being the “**Funding Member Pull-In Note**”). To the extent the Pull-In Notes have not been repaid by the Company in accordance with the terms of such notes, the Non-Funding Member shall be obligated to repay the Non-Funding Member Pull-In Note to the Funding Member by no later than April 1 of the Fiscal Year following the Fiscal Year in which such note was issued by the Company, by either (i) purchasing the Non-Funding Member Pull-In Note for an amount equal to the outstanding principal amount of such Non-Funding Member Pull-In Note (plus accrued and unpaid interest thereon) or (ii) lending an amount equal to the outstanding principal amount of, and accrued and unpaid interest on, the Non-Funding Member Pull-In Note to the Company so that the Company may repay the amount owed under such Non-Funding Member Pull-In Note to the Funding Member; *provided* that with respect to (ii) above (x) such loan is structured so that the Funding Member is in fact immediately repaid with the proceeds thereof and (y) the Company is not restricted contractually or otherwise from so borrowing from the Non-Funding Member or repaying the owed amount to the Funding Member.

(d) *Fourth*, if the financing options set forth in Sections 4.3.2(a), (b) and (c) are unavailable or are insufficient to cover the Financing Shortfall Amount, the Company shall seek Member Debt Financing for the remaining Financing Shortfall Amount based on each Member’s pro rata Percentage Interest. If a Member elects to fund its pro rata portion of the Financing Shortfall Amount (it being agreed that no Member shall be required to provide such financing), the Company shall issue to such Funding Member a non-convertible note in the amount of such Member’s pro rata funding of the Financing Shortfall Amount in the form attached hereto as **Exhibit E-1** (a “**Non-Convertible Note**”). However, if a Member elects not to fund its pro rata portion of the Financing Shortfall Amount, the Funding Member may elect also to fund the Non-Funding Member’s portion, and in return the Company shall issue to the Funding Member a convertible note in the form attached hereto as **Exhibit E-2** (a “**Convertible Note**” and, together with the Non-Convertible Note, “**Financing Shortfall Notes**”) with a principal amount equal to the amount of the Non-Funding Member’s pro rata portion of the Financing Shortfall Amount.

(1) Each Financing Shortfall Note shall bear interest at the same per annum rate as Member Debt Financing made under the 4-Year Operations Plan, and interest thereon shall be payable quarterly. Each Financing Shortfall Note shall be a 4-year amortizing note, with principal due and payable in four (4) equal annual installments, that is extendable at the option of the Member holding the Financing Shortfall Note and pre-payable at the option of the Company; *provided, however*, that if excess cash is not available to pay any of the annual installments in full at the time when due, pursuant to the provisions and restrictions set forth in Section 5.1.2 (including a lack of excess cash due to the prepayment of debt that has priority as set forth in Section 5.2), such unpaid installment will be deferred to the subsequent annual period, but, notwithstanding anything to the contrary in Section 5.1, in no event shall the final maturity of any such Financing Shortfall Note be extended without the consent of the Member holding the Financing Shortfall Note.

(2) At any time prior to the repayment in full or conversion of a Convertible Note, the Non-Funding Member may acquire for cash such Convertible Note by paying to the Funding Member an amount equal to the principal amount then outstanding, plus accrued and unpaid interest, under such Convertible Note. Upon such an acquisition, the conversion feature of such Convertible Note shall terminate.

(3) Notwithstanding the maturity date of any Convertible Note, such Convertible Note shall be convertible on or after the date (the “**Conversion Eligibility Date**”) that is the earlier of (a) the date of delivery of an Offer Notice by the Non-Funding Member and (b) the later of (x) the date that is four (4) years and ninety (90) days after the Launch Date and (y) the date that is one year after the date of issuance of such Convertible Note.

(4) Prior to converting a Convertible Note, the Funding Member holding the Convertible Note shall give the Non-Funding Member written notice of its intention to convert and, in the case that clause (b) of Section 4.3.2(d)(3) applies, make a Valuation Request pursuant to the method and process provided in Section 9.3. Upon receiving such notice, the Non-Funding Member shall have thirty (30) days to elect to purchase such Convertible Note as set forth in Section 4.3.2(d)(2). If the Non-Funding Member does not elect to purchase such Convertible Note within such 30-day period, the Funding Member holding the Convertible Note shall have the right to convert such Convertible Note upon completion of the Valuation. Upon conversion of the Convertible Note, the Company shall issue a number of Units to the Funding Member representing an additional Percentage Interest equal to the quotient of:

(A) the then outstanding principal amount of the Convertible Note plus accrued and unpaid interest

divided by

(B) the product of the Valuation Amount multiplied by the aggregate number of outstanding Units (prior to the issuance of Units upon conversion of such Convertible Note).

4.4 Operations Shortfalls

4.4.1 Calculation. No later than fifteen (15) days prior to the start of each fiscal quarter covered by the 4-Year Fixed Financial Support Plan, the Company will determine (a) the Projected Ending Cash Balance for such fiscal quarter, and (b) whether there is an Operations Shortfall with respect to such fiscal quarter. In the event that the Company determines that an Operations Shortfall exists, it shall promptly provide written notice thereof to each Member specifying the Operations Shortfall Amount and demonstrating the calculation thereof.

4.4.2 Draw Down. In the event that an Operations Shortfall occurs, the Company may draw down the Operations Shortfall Amount from the Revolver (or that portion thereof available under the Revolver, if any). If (and only if) the Revolver is not available, AMD and Fujitsu shall, or shall cause their respective Affiliates to, upon no less than thirty (30) days' prior written notice from the Company, provide Member Debt Financing (or arrange for the

provision of Member Guaranteed Financing) in an amount equal to the Percentage Interest (at the time of such Member Debt Financing) of AMD Member or Fujitsu Member, respectively, of the Operations Shortfall Amount (or the remaining portion thereof); *provided, however*, that

(a) the amount that the Company may draw under the Revolver or the aggregate Member Debt Financing shall be reduced by an amount equal to any excess spending (that has not already been so deducted from previous Operations Shortfall Amounts) measured cumulatively since the Launch Date on each of (i) Capex and (ii) R&D and G&A (taken together), that exceeds the sum of the limits for such category or categories set forth in the 4-Year Fixed Financial Support Plan for the period from the Launch Date through the end of the applicable fiscal quarter; and

(b) if the Company made any prepayment of debt to a Member or its respective Affiliates in accordance with Section 5.2 in the preceding fiscal quarter, the Operations Shortfall Amount shall be funded by AMD or Fujitsu or their respective Affiliates (i) up to the amount of such prepayments, on a pro rata basis in proportion to the amount of such prepayments made to each Member or its respective Affiliates and (ii) thereafter, on the Percentage Interest of AMD Member or Fujitsu Member, as applicable.

4.5 Obligations Outstanding at End of 4-Year Period

Each Member's or its respective Affiliates' obligations under any loans, guarantees or other financial support provided by such Member or its Affiliates that remain outstanding at the end of the 4-Year Period shall remain in effect until the expiration of such obligations, which shall be consistent with time limitations set forth in Sections 4.1.2 and 4.1.3, *provided* that the Company (a) shall endeavor to retire any Member Debt Financing as quickly as reasonably practicable and (b) shall not, without the applicable Member's consent, extend the maturity date, or otherwise amend any term that would increase the Company's financial or other obligations under, or extend the maturity of, any Member Guaranteed Financing.

4.6 Financing Responsibility After the First 4-Year Period

Upon determination by the Board of Managers that any financial support is necessary or appropriate for the conduct of the Company's business after the 4-Year Period (and subject to the option of the Board of Managers to seek other forms of financings as contemplated in Section 4.1.1), the provisions of Section 4.3.2 will apply *mutatis mutandis* to any such financing (except that (1) the option of Pull-Ins in Section 4.3.2(c) shall no longer be applicable and (2) determination of the Conversion Eligibility Date in Section 4.3.2(d)(3) shall be the first anniversary of the date of any such Convertible Note); *provided, however*, that no Member or its Affiliates shall have any obligation to provide any Capital Contributions, Member Debt Financing, Member Guaranteed Financing or other financial support to the Company (although each Member shall have the right to participate in any such additional financing on a pro rata basis in accordance with its respective Percentage Interest).

**ARTICLE 5.
DISTRIBUTIONS**

5.1 Distributions of Cash Available for Distribution

5.1.1 Tax Liability Distributions and Curative Distributions.

(a) Subject to Section 5.3 and Article 10, and only to the extent permitted under the Company's third-party debt agreements, the Company shall make cash distributions to each Member by wire transfer one Business Day before each day on which such Member is required to make a payment of Tax under Section 6151(a) or 6655 of the Code (for the avoidance of doubt, a payment of Tax shall for purposes of this Agreement be deemed "required" by Section 6655 to the extent that Section 6655 would impose an addition to tax upon the failure timely to make such payment). Each such distribution made to a Member shall be equal to the Tax Distribution Rate multiplied by a reasonable estimate of the amount of the Company's taxable income properly taken into account by such Member under Section 6151(a) or 6655 of the Code (in the case of income taken into account under Section 6655, the amount of each Member's taxable income properly taken into account shall be determined in accordance with Regulations Section 1.6654-2(d)(2) and the annualization method utilized by such Member pursuant to Section 6655) (such amount of taxable income shall be determined without regard to (i) the Member's share of the Company's Tax credits or (ii) any items of such Member (or of members of its "affiliated group" within the meaning of Code Section 1504(a) or of any other party) other than the Member's allocable share of the Company's items of income, gain, deduction and loss); *provided, however*, that if after the date hereof the United States Treasury Department or the Internal Revenue Service issues more specific guidance applicable to the calculation of estimated tax liabilities of corporations that are partners in partnerships and a Member is required to calculate its estimated tax in accordance with such guidance, the Company shall follow such guidance in determining the amount of the Company's Tax Liability Distributions with respect to such Member. Within two hundred eighty-five (285) days following the end of each Fiscal Year, the Company shall (i) determine the Tax Liability Distribution Adjustment with respect to each Member and the Adjusted Tax Liability Distribution Amount for each Member, (ii) provide to each Member a computation showing the amount of and (in reasonable detail) the calculations applied in determining the Tax Liability Distribution Adjustment and the Adjusted Tax Liability Distribution Amount for each of the Members, and (iii) distribute to each Member the amount of such Member's Tax Liability Distribution Adjustment, if such amount is a positive number (for the avoidance of doubt, such distribution shall, at the time the Members' respective Tax Liability Distribution Adjustments are determined, have the priority of a Tax Liability Distribution with respect to the Fiscal Year for which calculated). The Company shall reduce (but not below zero) the amount of the Tax Liability Distribution(s) that would otherwise be made to any Member under this Section 5.1.1(a) with respect to any subsequent Fiscal Year to take into account the amount of any negative Tax Liability Distribution Adjustment determined with respect to such Member for any prior Fiscal Year and not previously taken into account as a reduction under this sentence. If the Company anticipates that there may be insufficient cash available to make all Tax Liability Distributions in full in respect of any Fiscal Year, (i) the Company shall make Tax Liability Distributions to the Members pro rata according to the maximum amounts to which each

Member would be entitled if sufficient cash were available therefor, and (ii) no Tax Liability Distributions shall be made to a Member in respect of a Member's installment for estimated taxes covering calendar periods attributable to any subsequent Fiscal Year of the Company if the Tax Liability Distributions that any Member is entitled to receive with respect to any prior Fiscal Year (determined without regard to any reductions based on insufficiency of cash) have not been distributed in full. The Company shall also make Tax Liability Distributions to any Member in an amount equal to the sum of (i) the Tax Distribution Rate applicable to such Member with respect to income taken into account by the Company for the Audit Year (as defined below) multiplied by any increases in such Member's allocable share of the Company's taxable income arising as a result of an audit of the Company or a Member, and (ii) any interest and penalties attributable to such increase in such Member's allocable share (without reduction or limitation based on the amount of the underlying taxes being computed at a rate in excess of the Tax Distribution Rate), and in the event such Tax Liability Distributions are not proportionate to the Members' respective Percentage Interests (as applicable to the Fiscal Year for which such audit change applies (the "Audit Year")), the Company shall make an additional distribution as required so that the aggregate of such Tax Liability Distributions and such additional distribution will have been made in the same ratio as the Members' respective Percentage Interests as in effect for such Audit Year; provided, that if the Members' respective Percentage Interests varied during such Audit Year, such aggregate Tax Liability Distributions and additional distributions shall be made in the ratio of the Members' respective "book" items (within the meaning of Code Section 704(b)) corresponding to the tax items in respect of which the Tax Liability Distribution was made); and provided further, that if there is insufficient cash available to pay the entire amount of such Tax Liability Distributions and such additional distribution, such additional distribution shall be payable at the same time as any Curative Distribution calculated with respect to the Fiscal Year in which such Tax Liability Distributions are made would be payable. For the avoidance of doubt, a Member shall not be entitled to receive Tax Liability Distributions with respect to any amounts required to be recognized by a Member pursuant to Section 704(c)(1)(B) or Section 737 of the Code or corresponding provisions of State law.

(b) The Company shall, not later than 285 days following the close of each Fiscal Year, make a Curative Distribution, in cash, to the Member entitled to receive a Curative Distribution with respect to such Fiscal Year and shall simultaneously provide to each Member a calculation showing (in reasonable detail) how the amount of the Curative Distribution was determined. The Member entitled to receive a Curative Distribution with respect to any Fiscal Year shall be the Member to whom such amount must be distributed in order that the Adjusted Tax Liability Distribution Amount of one Member in respect of such Fiscal Year and the sum of the Adjusted Tax Liability Distribution Amount of and the Curative Distribution made to the other Member in respect of such Fiscal Year shall be in the Target Ratio. Notwithstanding any other provision of this Agreement, (i) no payments or distributions to the Members shall be made pursuant to Section 5.1.2(c) or any subsequent subsection of Section 5.1.2 until all distributions required to be made pursuant to this Section 5.1.1(b) and 5.1.1(c) have been made in full, (ii) no Curative Distribution shall be made in respect of any Fiscal Year of the Company if the Tax Liability Distributions (as described in Section 5.1.1(a) herein) that any Member is entitled to receive with respect to such Fiscal Year (determined without regard to reductions based on insufficiency of cash) have not been distributed in full, and (iii) the Curative Distribution in respect of the Company's Fiscal Year ending December 28, 2003 shall be made at the same time as the Curative Distribution in respect of the Company's Fiscal Year ending December 26, 2004.

(c) If the sum of a Member's Adjusted Tax Liability Distribution Amount and Curative Distribution in respect of a Fiscal Year of the Company is less than the amount of Taxes required to be paid by such Member in respect of such Fiscal Year of the Company (treating the Member's allocable share of the Company's income, gain, deduction, loss and credit as its sole Tax items and treating the applicable Tax rate as the Tax Distribution Rate), then the Company, upon notice by such Member, shall make a distribution to such Member in cash in an amount equal to the amount of such difference, as set forth on such notice. Such notice shall set forth a calculation showing (in reasonable detail) how such difference was determined. In the event distributions made pursuant to this Section 5.1.1(c) are not made in accordance with the Target Ratio, then the Company shall make an additional distribution in cash in such amount as is required in order that the aggregate distributions made pursuant to this Section 5.1.1(c) with respect to such Fiscal Year of the Company shall be made in the Target Ratio.

(d) The Company shall not agree in any contract or otherwise to any subordination of, or other restriction upon its ability to make, distributions set forth in Section 5.1.1(a) to any Member without the prior written consent of such Member.

5.1.2 Use of Cash. Subject to applicable legal and contractual restrictions and to Section 5.3 and Article 10, remaining available Company cash balances after the Tax Liability Distributions referred to in Section 5.1.1 will be treated as follows (in the following order of priority):

(a) *First*, cash will be retained in the Company in an amount sufficient to fund the Company's operations, in accordance with the Company's Annual Budget and Rolling Quarterly Plan. Such amount (i) will take into consideration scheduled debt service, lease and other payments to third parties, payments of amounts due to either Member or their respective Affiliates pursuant to intellectual property license agreements, consulting agreements, services agreements, subcontracting agreements, lease agreements and other similar agreements, and scheduled debt service payments to one Member or its Affiliates with respect to Member Debt Financing where the other Member (or its Affiliates) satisfied its financing obligation to the Company via Member Guaranteed Financing, but (ii) will not otherwise include any of the uses of funds described in Sections 5.1.2(c) through (f) below;

(b) [intentionally omitted]

(c) *Second*, cash will be used to repay or pay, as the case may be, on a *pari passu* basis, all outstanding debt owed by the Company to AMD Member and/or Fujitsu Member or their respective Affiliates that is incurred as of the Launch Date;

(d) *Third*, subject to Section 5.1.3 below, cash will be used to repay, on a *pari passu* basis, all outstanding debt owed by the Company to the applicable Members or their Affiliates, that is (i) incurred to fund the operations of the Company (other than the debt

referred to in clause (e) below) or (ii) evidenced by a Financing Shortfall Note issued after the expiration of the 4-Year Period, *provided* that if there are not enough funds available to pay such debt referred to in this Section 5.1.2(d), and any Convertible Note evidencing a Non-Funding Member's portion of any such Financing Shortfall Amount remains convertible, then the amount allocated to payments in respect of the Funding Member's portion of any Financing Shortfall Amount shall instead be allocated such that outstanding amounts under the Convertible Note are paid in full prior to paying amounts outstanding under the Non-Convertible Note;

(e) *Fourth*, subject to Section 5.1.3 below, cash will be used to repay, on a *pari passu* basis, all outstanding debt owed by the Company to the applicable Members or their Affiliates that is evidenced by a Financing Shortfall Note issued during the 4-Year Period, *provided* that if there are not enough funds available to pay all such debt referred to in this Section 5.1.2(e), and any Convertible Note evidencing a Non-Funding Member's portion of any such Financing Shortfall Amount remains convertible, then the amount allocated to payments in respect of the Funding Member's portion of any Financing Shortfall Amount shall instead be allocated to the extent necessary so that the outstanding amounts under the Convertible Note are paid in full prior to paying amounts outstanding under the Non-Convertible Note; and

(f) *Fifth*, subject to Section 5.1.4, any excess cash remaining will be distributed at the discretion of the Board of Managers to AMD Member and Fujitsu Member pro rata based on their Percentage Interests at the time of such distribution.

Notwithstanding anything to the contrary herein, in the event that prior to September 30, 2003, the Company procures lease financing with respect to its owned equipment that (i) constitutes part of the fabrication facility known by the parties as "Fab 25" or the facility known by the parties as the "SDC," (ii) was located as of June 30, 2003 at the Austin Real Property (as defined in the Contribution Agreement) or the Sunnyvale Real Property (as defined in the Contribution Agreement), as applicable, and (iii) is not otherwise pledged or hypothecated to secure debt or subject to an existing lease facility, then the proceeds of any such financing shall be promptly paid to AMD as a prepayment of the AMD Asset Sale Promissory Note (as defined in the Contribution Agreement); *provided, however*, that the aggregate amount of such prepayment(s) shall in no event exceed U.S.\$99,000,000.

5.1.3 Treatment after 4-Year Period. Upon the date that is one (1) year after the last day of the 4-Year Period, Sections 5.1.2(d) and 5.1.2(e) shall be combined so that all debt referred to therein shall be repaid on a *pari passu* basis, *provided* that the distinction in the treatment of the Convertible Notes versus Non-Convertible Notes thereunder shall be preserved.

5.1.4 Excess Allocations. Subject to Section 5.3 and Article 10, to the extent a Member's Percentage Interest is adjusted for any reason as provided in this Agreement and the aggregate allocations of Net Profit (and similar items) net of any allocations of Net Losses (and similar items) made to such Member pursuant to Article 6 on a cumulative basis through the effective time of such adjustment exceeded: (a) the aggregate distributions made to such Member pursuant to Sections 5.1.1, 5.1.2(f) and 5.5 *plus* (b) all amounts previously distributed to such Member pursuant to this Section 5.1.4 through such effective time (collectively, an "**Excess Allocation**"), then prior to the making of any further distributions pursuant to Section 5.1.2(f) (or

Section 5.5, to the extent a distribution made under Section 5.5 is apportioned among the Members in the same amounts as a like amount of cash would have been apportioned pursuant to Section 5.1.2(f)), distributions shall first be made *pro rata* among the Members according to their respective Excess Allocation amounts existing at such time, to the extent thereof.

5.2 Prepayment

The Company may prepay any obligations to the Members or their Affiliates in respect of debt; *provided, however*, that (a) the Board of Managers has determined that the Company has available for such prepayments funds that are in excess of the amount necessary to pay its outstanding obligations as they come due, (b) the Board of Managers has determined that such prepayments could not reasonably be expected to cause an Operations Shortfall and (c) such prepayments are made in an order of priority consistent with the order of priority set forth in Section 5.1.2.

5.3 Distributions Upon Liquidation

Distributions made in conjunction with the final liquidation of the Company shall be applied or distributed as provided in Article 10 hereof.

5.4 Withholding

The Company may withhold amounts in respect of allocations or distributions if it is required to do so by any Applicable Law, and each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member such amount of federal, state, local or foreign taxes that the Tax Matters Partner determines the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, *provided* that the Tax Matters Partner shall provide Fujitsu Member with five (5) Business Days advance written notice of the amount of any withholding to be made in respect of allocations or distributions to Fujitsu Member (or any Affiliate of Fujitsu Member) which notice shall demonstrate the calculation thereof. Any amounts withheld pursuant to this Section 5.4 shall be treated as having been distributed to such Member. Each Member hereby represents that it has provided to the Company IRS Form W-9 and that it has provided or will from time to time provide such other forms or documents as may reasonably be required in order to establish the status of such Member for purposes of the tax laws of any applicable jurisdiction. Each Member agrees to indemnify and hold harmless the Company from any liability imposed on the Company for (i) any action taken by the Company in reliance upon such representation of tax withholding status or (ii) any failure to withhold from any amount distributable or allocable, or deemed distributable or allocable, to such Member pursuant to this Agreement. A Member's obligations hereunder shall survive the dissolution, liquidation or winding up of the Company. If Fujitsu Member believes that the Tax Matters Partner may in the future adopt withholding practices in respect of Fujitsu Member (or any Affiliate of Fujitsu Member) that are not in accordance with the requirements of law, Fujitsu Member shall notify the Tax Matters Partner of the basis for its objection to such withholding practices and, if the matter cannot be resolved by agreement, the Board of Managers shall refer the issue to an independent law firm of national stature (which shall not be a law firm that is regularly used by the Tax Matters Partner or the

Company), which shall advise the Company concerning the legal obligations of the Company in respect of withholding, and thereafter the Tax Matters Partner shall act consistently with such advice in matters pertaining to withholding. If the Tax Matters Partner acts in accordance with the advice of such law firm and a Governmental Authority later asserts in writing to any Person that the Company failed to withhold Tax at the time and/or in the amounts required by Chapter 3 of the Code or comparable provisions of other Tax laws in respect of Fujitsu Member and/or its Affiliates, then Fujitsu Member and/or its Affiliates, as applicable, shall promptly upon receipt of a copy of such writing accompanied by a written notice from the Company specifying that a payment is required pursuant to this Section 5.4 pay to such Governmental Authority an amount in full satisfaction of the amount of Taxes so asserted by such Governmental Authority. If Fujitsu Member and its Affiliates do not promptly pay such amount to such Governmental Authority, then, unless Fujitsu Member provides satisfactory written evidence of settlement in full of the matter asserted by the Governmental Authority, the Company shall withhold such amount from the next distribution(s) to Fujitsu Member, shall promptly pay such withheld amounts over to such Governmental Authority in payment of such asserted liability for Taxes and shall treat the amounts so withheld and paid over as actually distributed to Fujitsu Member.

5.5 Distributions in Kind

(a) No right is given to any Member to demand or receive any distribution of property other than cash as provided in this Agreement. Upon a vote of the Board of Managers (including a Special Vote of the Board of Managers for so long as Fujitsu Member's Percentage Interest is at least twenty percent (20%)), the Board of Managers may determine, in its sole and absolute discretion, to make a distribution in kind of Company Assets to the Members, and such Company Assets shall be distributed in such fashion as to ensure that the fair market value thereof (as determined by the Board of Managers, including a Special Vote of the Board of Managers for so long as Fujitsu Member's Percentage Interest is at least twenty percent (20%)) is distributed, and any items of gain or loss resulting from such distribution are allocated, in accordance with this Article 5 and Articles 6 and 10 hereof.

(b) Unless all of the Members agree otherwise in writing,

(1) any distribution in kind of Company Assets that were contributed to the Company more than seven (7) years before the distribution date of such Company Assets shall be made to the Members in undivided interests in proportions reflecting the manner in which the equivalent amount of cash would be distributed pursuant to Sections 5.1.2(f), 5.1.4 or 10.5.1(e), as applicable, and

(2) any distribution in kind of Company Assets that were contributed to the Company seven (7) years or less before the distribution date shall, if the Percentage Interest of the Fujitsu Member is less than twenty percent (20%) at the time of the distribution, be made to the Members in undivided interests in proportions reflecting the manner in which the equivalent amount of cash would be distributed pursuant to Sections 5.1.2(f), 5.1.4 or 10.5.1(e), as applicable; *provided, however*; that at the election of either Member a distribution in kind of Company Assets pursuant to this Section 5.5(b)(2) shall not be made, in whole or in part, to the Members in undivided interests (and the amount not so distributed in

undivided interests shall instead be distributed to the Member that originally contributed such Company Asset) as long as either (y) the Members agree on the fair market values of the Company Asset to be distributed, or (z) the value of such Company Asset has been established by a Qualified Valuator, who shall make such determination as soon as practicable, and in any event within sixty (60) days of being requested to do so. The Company shall pay all expenses of the Qualified Valuator, whose determination shall be final and binding on the Company and the Members. Notwithstanding any other provision of this Section 5.5, the aggregate value of each distribution made hereunder shall be apportioned among the Members in the same amounts as a like amount of cash would have been apportioned pursuant to Sections 5.1.2(f), 5.1.4 or 10.5.1(e), as applicable, and to that end the Company shall if necessary distribute cash as part of a distribution of any distribution of Company Assets in kind.

5.6 Limitations on Distributions

Notwithstanding any provision to the contrary contained in this Agreement, neither the Company nor the Board of Managers, on behalf of the Company, shall be required to or shall knowingly make a distribution to any Member or the holder of any Economic Interest on account of its Membership Interest or Economic Interest in the Company (as applicable) in violation of the Act or other Applicable Law.

ARTICLE 6. ALLOCATIONS OF NET PROFITS AND NET LOSSES

6.1 General Allocation of Net Profits and Losses

6.1.1 Net Profits and Net Losses shall be determined and allocated with respect to each Fiscal Year of the Company as of the end of such Fiscal Year and at such other times, if any, as the Board of Managers shall determine is appropriate for purposes of administering this Agreement. Subject to the other provisions of this Agreement, an allocation to a Member of a share of Net Profits or Net Losses shall be treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing Net Profits or Net Losses.

6.1.2 Subject to the other provisions of this Article 6, Net Profits, Net Losses and any other items of income, gain, loss and deduction for any Fiscal Year shall be allocated in proportion to the Members' respective Percentage Interests.

6.2 Regulatory Allocations

Notwithstanding the foregoing provisions of this Article 6, the following special allocations shall be made in the following order of priority:

6.2.1 If there is a net decrease in Company Minimum Gain during a Company taxable year, then, to the extent required by Regulations Section 1.704-2(f), each Member shall be allocated items of Company income and gain for such taxable year (and, if necessary, for subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g)(2). This Section 6.2.1 is intended to comply with the minimum gain chargeback requirement of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

6.2.2 If there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company taxable year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall, to the extent required by Regulations Section 1.704-2(i)(4), be specially allocated items of Company income and gain for such taxable year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in a manner consistent with the provisions of Regulations Section 1.704-2(g)(2). This Section 6.2.2 is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

6.2.3 If any Member unexpectedly receives an adjustment, allocation, or distribution of the type contemplated by Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), and after receiving such adjustment, allocation, or distribution, such Member has an Adjusted Capital Account Deficit, items of income and gain shall be allocated to all such Members (in proportion to the amounts of their respective Adjusted Capital Account Deficits) in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit of such Member as quickly as possible. This Section 6.2.3 is intended to constitute a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

6.2.4 If the allocation of Net Loss to a Member as provided in Section 6.1 would create or increase an Adjusted Capital Account Deficit for such Member, there shall be allocated to such Member only that amount of Net Loss as will not create or increase an Adjusted Capital Account Deficit. The Net Loss that would, absent the application of the preceding sentence, otherwise be allocated to such Member shall be allocated to the other Members in accordance with their relative Percentage Interests, subject to the limitations of this Section 6.2.4. If, after the allocation of Net Loss pursuant to the preceding two sentences, no additional amount of Net Loss can be allocated to any Member without creating or increasing an Adjusted Capital Account Deficit for such Member, then Net Loss shall be allocated to the Members in accordance with their relative Percentage Interests. This Section 6.2.4 is intended to implement the alternate test for economic effect set forth in Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

6.2.5 To the extent that an adjustment to the adjusted tax basis of any Company Asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its Interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

6.2.6 The Nonrecourse Deductions for each taxable year of the Company shall be allocated to the Members in proportion to their Percentage Interests.

6.2.7 The Member Nonrecourse Deductions shall be allocated each year to the Member that bears the economic risk of loss (within the meaning of Regulations Section 1.752-2) for the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable.

6.2.8 The allocations set forth in Sections 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6 and 6.2.7 (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding the provisions of Section 6.1.2, the Regulatory Allocations shall be taken into account by the Board of Managers in specially allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. In exercising its discretion under this Section 6.2.8, the Board of Managers shall take into account future Regulatory Allocations that, although not yet made, are likely to offset other Regulatory Allocations previously made.

6.3 Tax Allocations

6.3.1 Except as provided in Section 6.3.2, for income tax purposes under the Code and the Regulations and for purposes of applicable state and local law, each Company item of income, gain, loss and deduction shall be allocated between the Members in the same manner as its correlative item of “book” income, gain, loss or deduction is allocated pursuant to this Article 6.

6.3.2 Tax items with respect to Company Assets that are contributed to the Company with a Gross Asset Value that varies from its basis in the hands of the contributing Member immediately preceding the date of contribution shall be allocated between the Members for income tax purposes pursuant to Regulations promulgated under Code Section 704(c) or, if applicable, corresponding provisions of applicable state or local law so as to take into account such variation. The Company shall account for such variation under any permissible method set forth in Regulations Section 1.704-3 as determined by the Tax Matters Partner. If the Gross Asset Value of any Company Asset is adjusted pursuant to subsection (2) of the definition of “Gross Asset Value,” subsequent allocations of income, gain, loss and deduction with respect to such Company Asset shall take account of any variation between the adjusted basis of such Company Asset for federal income tax purposes and its Gross Asset Value under any permissible method set forth in Regulations Section 1.704-3 as determined by the Tax Matters Partner. Any tax credits will be allocated to the Members in accordance with the requirements of applicable tax law. Allocations pursuant to this Section 6.3.2 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member’s Capital Account or share of Net Profits, Net Losses and any other items or distributions pursuant to any provision of this Agreement.

6.4 Other Provisions

6.4.1 For any Fiscal Year during which any Membership Interest or Economic Interest or portion thereof is Transferred between the Members or to another Person or is otherwise disposed of or acquired, or there is for any other reason a change in the Members' respective Percentage Interests, the portion of the Net Profits, Net Losses and other items of income, gain, loss, deduction and credit with respect to such Membership Interest or Economic Interest or portion thereof shall be allocated and, to the extent necessary apportioned, under any method allowed pursuant to Section 706 of the Code and the applicable Regulations, as reasonably determined by the Board of Managers; provided, that the Board of Managers shall utilize consistent methods with respect to the same or substantially similar transactions and items in making such allocations or apportionments with respect to all such changes in the Members' respective Percentage Interests, whether occurring within a single Fiscal Year or in different Fiscal Years.

6.4.2 In the event that the Code or any Regulations require allocations of items of income, gain, loss, deduction or credit different from those set forth in this Article 6, the Board of Managers is hereby authorized to make new allocations in reliance on the Code and such Regulations, and no such new allocation shall give rise to any claim or cause of action by any Member, *provided* that such allocations are consistent with the advice of the Company Accountant or tax counsel and are not likely to alter materially the amounts which each Member is entitled to receive under the terms of this Agreement.

6.4.3 For purposes of determining a Member's proportional share of the Company's "excess nonrecourse liabilities" within the meaning of Regulations Section 1.752-3(a)(3), each Member's interest in Net Profits shall be such Member's Percentage Interest.

6.4.4 Section 482 Adjustments.

(a) Company Section 482 Adjustment. If the Internal Revenue Service or any applicable state or local taxing authority reallocates an item of income, deduction or loss to the Company pursuant to Code Section 482 or any similar rule or principle of law (a "**Company Section 482 Allocation**"), and a Member or an Affiliate of such Member has a corresponding "correlative item," as determined under Regulations Section 1.482-1(g) (the "**Member Correlative Item**"), the item of income, deduction or loss constituting such Company Section 482 Allocation shall be specially allocated to and reflected in the Capital Account of the Member who received (or whose Affiliate received) such Member Correlative Item, and such Member shall be treated as making any corresponding deemed capital contribution or receiving any corresponding deemed distribution, with such deemed capital contribution or distribution, as the case may be, reflected in the Capital Account of such Member.

(b) Member Section 482 Adjustment. If the Internal Revenue Service or any applicable state or local taxing authority reallocates an item of income, deduction or loss to a Member or an Affiliate of such Member pursuant to Code Section 482 or any similar rule or principle of law (a “**Member Section 482 Allocation**”), and the Company has a corresponding “correlative item,” as determined under Regulations Section 1.482-1(g) (the “**Company Correlative Item**”), such Company Correlative Item shall be specially allocated to and reflected in the Capital Account of the Member that received (or whose Affiliate received) such Member Section 482 Allocation, and such Member shall be treated as making any corresponding deemed capital contribution or receiving any corresponding deemed distribution, with such deemed capital contribution or distribution, as the case may be, reflected in the Capital Account of such Member.

(c) Corresponding Treatment if Foreign Adjustment. If any taxing authority outside the United States makes an adjustment to the income, deduction or loss of the Company or a Member (or an Affiliate of a Member) that is analogous to an adjustment under Code Section 482, the Board of Managers shall use commercially reasonable efforts to handle any affected items of the Company in a manner analogous to the treatment of an adjustment under Code Section 482 as set forth in Sections 6.4.4(a) and 6.4.4(b) above.

6.4.5 The Members acknowledge and are aware of the income tax consequences of the allocations made by this Article 6 and hereby agree to be bound by the provisions of this Article 6 in reporting their shares of the Company’s income and loss for federal, state and local income tax purposes. Without limiting the foregoing sentence, each Member acknowledges that, while it presently has no plan or intention to take a position in preparing a tax return that requires it to file a notice of inconsistent treatment under Code Section 6222(b), if it intends to do so in the future, it shall use its best efforts to provide at least ten (10) days advance notice of such intent to the Company and shall, if so requested by the Company, consult with the Tax Matters Partner concerning such position.

6.4.6 Any Member who is treated as contributing cash to the Company under Regulation Section 1.1032-3(b) pursuant to the stock option plan described in Section 7.16 herein or any similar plan shall be specially allocated an amount of the Company’s corresponding compensation deductions equal to the amount of the deemed cash contribution; provided, that if options are exercised by an employee of a Company Entity (other than the Company) that is classified as a partnership for United States federal income tax purposes (or as an entity disregarded as separate from a partnership), the Company shall ensure that the Company will be allocated an amount of such Company Entity’s compensation deductions at least equal to the amount of such deemed cash contribution and such compensation deductions (not in excess of the amount of the deemed cash contribution) shall be specially allocated to the contributing Member; and provided further, that if options are exercised by an employee of a Company Entity that is not classified as a partnership (or as an entity disregarded as separate from a partnership) for United States federal income tax purposes, such contributing Member shall be specially allocated, for the Fiscal Year of the Company which includes the date of such exercise, deductions (which shall consist of a pro rata share of each item of deduction taken into account by the Company in computing Net Profits or Net Losses for such Fiscal Year in accordance with Section 6.1.1 herein) in an amount equal to the amount of the compensation

deduction the Company would have had if such exercising employee had been an employee of the Company, but in no event shall such special allocation of deductions with respect to any such employee of any such Company Entity exceed the amount of the contributing Member's deemed cash contribution pursuant to Regulations Section 1.1032-3(b), determined in accordance with the principles set forth in the following sentence of this Section 6.4.6 with respect to the options so exercised. A Member shall be treated as contributing cash to the Company under Regulation Section 1.1032-3(b) to the extent (x) the fair market value of the purchased shares of the Member or its Affiliate as of the date the option with respect to such shares is exercised pursuant to the stock option plan described in Section 7.16 herein or any similar plan, exceeds the sum of (y) the amount of cash (if any) paid or to be paid in accordance with Section 7.16 herein by the Company to a Member or its Affiliate (excluding any portion of such amount that is paid as interest pursuant to Section 7.16 herein) in consideration for such option multiplied by a fraction the numerator of which is the number of shares purchased pursuant to such option exercise and the denominator of which is the aggregate number of shares subject to such option and (z) the aggregate exercise price paid with respect to the number of shares purchased pursuant to such option exercise. For purposes of this Section 6.4.6, a Company Entity that is treated as disregarded from the Company for U.S. federal income tax purposes shall be treated as the Company.

6.4.7 All matters concerning the allocations and other determinations provided for in this Article 6 and any accounting procedures not expressly provided for in this Agreement shall be determined by the Board of Managers in a manner consistent with the terms and intent of this Agreement.

ARTICLE 7. MANAGEMENT

7.1 Board of Managers

7.1.1 Powers. Except as otherwise expressly provided in this Agreement, all management powers over the business, property and affairs of the Company are exclusively vested in a board of Managers (the "**Board of Managers**"), and no Member shall have any right to participate in or exercise control or management power over the business and affairs of the Company or otherwise to bind, act or purport to act on behalf of the Company in any manner. Subject to the limitations set forth in this Agreement, the Board of Managers shall have all the rights and powers that may be possessed by a manager under the Act, which shall include, without limitation, the power to incur indebtedness, the power to enter into agreements and commitments of all kinds, the power to manage, acquire and dispose of Company Assets, and all ancillary powers necessary or convenient as to the foregoing. Unless authorized by a Special Vote of the Board of Managers, no individual Manager may act for the Board of Managers or have authority to bind the Company. The Managers shall devote such time to the business and affairs of the Company as is reasonably necessary for the performance of their duties, but shall not be required to devote full time to the performance of such duties.

7.1.2 Evaluation of Officers. The Board of Managers will be responsible for supervision and evaluation of the Company's Chief Executive Officer and other Executive

Officers on an ongoing basis, including at least an annual review of their performance to ensure they are acting in accordance with prudent business practices. In doing so, the Board of Managers will consider, among other factors, deviations in the Company’s financial condition, results of operations and/or cash flows compared to those matters as set forth in the 4-Year Operations Plan and the then-applicable Annual Budget and Rolling Quarterly Plan and whether any such deviations were caused by unexpected external factors. In the event that the Board of Managers determines that the Chief Executive Officer or any other Executive Officer is not acting in accordance with prudent business practices, then, as soon as practicable, the Board of Managers shall (i) if appropriate, take actions to remedy or improve the performance of the Chief Executive Officer and/or other Executive Officers or (ii) replace the Chief Executive Officer or other Executive Officers.

7.2 Number of Managers; Appointment of Managers

The Board of Managers shall initially consist of ten (10) individuals (each such individual, a “**Manager**”). Subject to Sections 7.3 and 7.4 below, six (6) of the Managers shall be appointed by AMD Member and four (4) of the Managers shall be appointed by Fujitsu Member. Unless a Manager resigns (including death or retirement) or is removed, each Manager shall hold office until a successor shall have been duly elected in accordance with this Section 7.2. Any Manager may be removed for cause in accordance with Applicable Law. In addition, each Member having the right to nominate a Manager or Managers pursuant to this Section 7.2 shall also have the right, in its sole discretion, to remove such Manager or Managers at any time, by delivery of written notice to the other Members, the Company and the Manager(s) to be removed. In the case of a vacancy in the office of a Manager for any reason (including by reason of death, resignation, retirement or removal pursuant to the preceding sentence), the vacancy shall be filled by the Member that nominated the Manager in question; *provided, however*, that in the case of a vacancy created due to a change in a Member’s Percentage Interest as described Section 7.3 or 7.4, such vacancy shall be filled in accordance with Section 7.3 or 7.4. AMD Member hereby selects Hector de J. Ruiz, Robert Rivet, Bertrand Cambou, Thomas McCoy, James Doran and Henri Richard to serve on the initial Board of Managers, and Thomas Eby as the non-voting participant contemplated under Section 7.4. Fujitsu Member hereby selects Toshihiko Ono, Shinji Suzuki, Nobutake Matsumura and Kazuhiko Kato to serve on the initial Board of Managers, and Kazunori Imaoka as the non-voting participant contemplated under Section 7.3.

7.3 Effect of Change in Fujitsu Member’s Percentage Interest on Fujitsu Managers

The number of Managers that Fujitsu Member can appoint or maintain on the Board of Managers shall depend on Fujitsu Member’s Percentage Interest as follows:

<u>Fujitsu Member’s Percentage Interest</u>	<u>Number of Fujitsu Managers</u>
³ 30%	4
³ 20% and < 30%	3
³ 10% and < 20%	2
< 10%	0

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

If Fujitsu Member's Percentage Interest should fall below any of the threshold levels listed above, there shall promptly be a vote of the Members to elect a new Board of Managers based upon the new Percentage Interests. In addition, for so long as Fujitsu Member's Percentage Interest is greater than or equal to five percent (5%), Fujitsu Member shall have the right to have one (1) additional representative attend meetings of the Board of Managers as a non-voting participant.

7.4 Effect of Change in AMD Member's Percentage Interest on AMD Managers

The number of Managers that AMD Member can appoint or maintain on the Board of Managers shall depend on AMD Member's Percentage Interest as follows:

<u>AMD Member's Percentage Interest</u>	<u>Number of AMD Managers</u>
³ 50%	6
³ 45% and < 50%	5
³ 30% and < 45%	4
³ 20% and < 30%	3
³ 10% and < 20%	2
<10%	1

If AMD Member's Percentage Interest should fall below any of the threshold levels listed above, there shall promptly be a vote of the Members to elect the Board of Managers based upon the new Percentage Interests. In addition, for so long as AMD Member's Percentage Interest is greater than or equal to five percent (5%), AMD Member shall have the right to have one (1) representative attend meetings of the Board of Managers as a non-voting participant.

7.5 Chairman of the Board of Managers

A Chairman of the Board of Managers (the "**Chairman of the Board**") shall preside at all meetings of the Board of Managers. Selection of the Chairman of the Board from among the Managers shall be as follows: During the first three (3) years following the Launch Date, the Chairman of the Board will be appointed by Fujitsu Member, subject to AMD Member's approval, which approval shall not be unreasonably withheld. During the next three (3) years, the Chairman of the Board will be appointed by AMD Member subject to Fujitsu Member's approval, which approval shall not be unreasonably withheld. The right to appoint a Manager as Chairman of the Board will continue to rotate between Fujitsu Member and AMD Member in this manner; *provided, however*, that if the Percentage Interest of either AMD Member or Fujitsu Member falls below thirty percent (30%), then the Chairman of the Board will be appointed by a majority of the Board of Managers and neither Member will have an approval right. The Chief Executive Officer may not serve as the Chairman of the Board.

7.6 Meetings of Members and of the Board of Managers; Quorum

7.6.1 Member Meetings. At any time, and from time to time, the Board of Managers may, but shall not be required to, call meetings of the Members. Written notice of any such meeting (which may be provided via facsimile) shall be given to all Members not less than five (5) Business Days nor more than thirty-five (35) Business Days prior to the date of such meeting. Each meeting of the Members shall be conducted by the Chairman of the Board of Managers or any designee thereof. Each Member may authorize any Person (provided such other Person is an officer of the Member or its parent company) to act for it or on its behalf on all matters in which the Member is entitled to participate. Each proxy must be signed by a duly authorized officer of the Member. All other provisions governing, or otherwise relating to, the holding of meetings of the Members, shall from time to time be established in the sole discretion of the Board of Managers. Interpreters will be provided for any meeting of the Members, at the cost of the Company, upon the request of any Member.

7.6.2 Action by Member Consent. Any action which may be taken at any meeting of the Members, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken is executed by all Members.

7.6.3 Board Meetings. The Board of Managers shall hold meetings at least once per every fiscal quarter. It is the intention of the Members that all Managers attend each meeting in person, and each Manager shall use such Manager's best efforts to attend each meeting in person. The presence of six (6) Managers (with at least fifty percent (50%) of the Managers present being AMD Managers), in each case, in person or by telephone conference or by other means of communications acceptable to the Board of Managers, shall be necessary and sufficient to constitute a quorum for the purpose of taking action by the Board of Managers at any meeting of the Board of Managers.

7.6.4 Notice; Waiver. The regular quarterly meetings of the Board of Managers described in Section 7.6.3 shall be held upon not less than five (5) Business Days written notice. Additional meetings of the Board of Managers may be held at the request of any Manager, upon not less than five (5) Business Days written notice (which may be provided via facsimile or other manner provided in Section 13.5) or telephonic notice to each Manager (which notice shall be provided to the other Managers by the requesting Manager). The presence of any Manager at a meeting (including by means of telephone conference or other means of communications acceptable to the Board of Managers) shall constitute a waiver of notice of the meeting with respect to such Manager. Except as otherwise expressly provided in Section 7.6.8 and Schedule B, no action taken by the Managers at any meeting shall be valid unless the requisite quorum is present.

7.6.5 Voting of Managers. Except as otherwise expressly provided in this Agreement, all actions, determinations or resolutions of the Board of Managers shall require the affirmative vote or consent of a majority of the Board of Managers present at any meeting at which a quorum is present. Each Manager shall be entitled to one (1) vote, and Managers shall not be entitled to cast their vote through proxies. The Board of Managers may act without a meeting if the action is consented to in advance or subsequently ratified, in each case in writing.

by the requisite number of Managers (including the affirmative vote of at least fifty percent (50%) of the Managers appointed by Fujitsu serving at that time in the case of matters requiring a Special Vote) that would have been required at a meeting of the Board of Managers with all Managers present.

7.6.6 Meetings by Telecommunications. Unless the Act otherwise provides, members of the Board of Managers shall have the right to participate in all meetings of the Board of Managers by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

7.6.7 Interpreters. Interpreters will be provided for any meeting of the Board of Managers, at the cost of the Company, upon the request of any Manager.

7.6.8 Related Party Claims. Notwithstanding anything herein to the contrary, the decision of any Company Entity to pursue, and the procedures for pursuing, a Fujitsu Manager Claim or an AMD Manager Claim shall be as set forth on Schedule B.

7.7 Actions Requiring a Special Vote of the Board of Managers

Notwithstanding the provisions of Section 7.6.5 or any other provisions of this Agreement, the Company may not, and no Member or Manager may cause the Company to, take any of the following actions or any other action specified in this Agreement as requiring a Special Vote without a Special Vote of the Board of Managers:

7.7.1 30% Threshold. In addition to Special Vote provisions provided to Fujitsu Member in Sections 7.7.2 and 7.7.3, for so long as Fujitsu Member's Percentage Interest is at least thirty percent (30%):

(a) effect any investment in, or acquisition or disposition of, assets (including through a transfer of equity securities) by a Company Entity or Company Entities (including by merger, consolidation or otherwise) that comprise greater than twenty percent (20%) of the fair market value (subject to the last paragraph of this Section 7.7.1, as determined by the Board of Managers) of the assets of the Company Entities taken as a whole; *provided, however*, that there shall be no Special Vote of the Board of Managers required with respect to the acquisition or construction of the **** in the 4-Year Fixed Financial Support Plan to the extent that the acquisition or construction of **** does not require the cumulative capital expenditure amounts set forth in the 4-Year Fixed Financial Support Plan through the then-current fiscal quarter to be exceeded;

(b) effect a merger or consolidation (in a transaction or series of transactions) in which the Company is not the surviving entity or in which the Company is the surviving entity but in either case in which the Membership Interests or Units possessing more than fifty percent (50%) of the total combined Membership Interests or Units are transferred to a Person or Persons different than those who held such interests immediately prior to the merger or consolidation or the initial transaction culminating in such merger or consolidation;

(c) settle any lawsuit, administrative proceeding, tax claim or other legal proceeding where any Company Entity pays the settlement of a dollar amount that is greater than ten percent (10%) of the fair market value (subject to the last paragraph of this Section 7.7.1, as determined by the Board of Managers) of the assets of the Company Entities taken as a whole;

(d) settle any lawsuit, administrative proceeding, tax claim or other legal proceeding involving both a Company Entity on the one hand, and AMD or any of its Affiliates on the other hand, that involves actual or potential payments to or from any Company Entity exceeding ten million dollars (U.S.\$10,000,000);

(e) settle any series of related lawsuits, administrative proceedings, tax claims or other legal proceedings involving both a Company Entity on the one hand, and AMD or any of its Affiliates on the other hand, that involves actual or potential payments to or from any Company Entity exceeding fifty million dollars (U.S.\$50,000,000) in the aggregate; or

(f) During any time period that AMD Member's Percentage Interest is greater than fifty percent (50%) but AMD does not consolidate the Company's results of operations with AMD's financial statements, (i) effect the investment in, or acquisition of, any Person (including by an acquisition of equity securities of such Person, by a transaction structured as an asset purchase or transfer, or by merger, consolidation or otherwise) by a Company Entity or Company Entities, in each case that exceeds one hundred million dollars (U.S.\$100,000,000) in the aggregate, or (ii) **** in the **** and approve the material terms and conditions of, or any material amendment to, any agreement between the Company and such ****.

For purposes of Sections 7.7.1(a) and 7.7.1(c), if a five percent decrease in the fair market value of the assets of the Company Entities taken as a whole (as determined by the Board of Managers) would have resulted in a requirement for a Special Vote under either of such Sections, then there shall be a Special Vote with respect to the determination of the fair market value of the assets of the Company Entities taken as a whole.

7.7.2 20% Threshold. In addition to Special Vote provisions provided to Fujitsu Member in Section 7.7.3, for so long as Fujitsu Member's Percentage Interest is at least twenty percent (20%):

(a) approve the fairness of pricing terms and the fairness of other terms having an economic impact of any contract, agreement, arrangement or understanding (or any series of related contracts, agreements, arrangements or understandings relating to the same or substantially similar subject matter) entered into after the date hereof between any Company Entity on the one hand, and AMD (or any of their respective Affiliates) on the other hand, that involves actual or potential payments to or from any Company Entity exceeding seventeen million five hundred thousand dollars (U.S.\$17,500,000) in any Fiscal Year or eighty seven million five hundred thousand dollars (U.S.\$87,500,000) in the aggregate over the life of the contract, agreement, arrangement or understanding;

(b) approve the fairness of pricing terms and the fairness of other terms having an economic impact of any amendment to any contract, agreement, arrangement or understanding (or any series of related contracts, agreements, arrangements or understandings relating to the same or substantially similar subject matter) between any Company Entity on the one hand, and AMD (or any of their respective Affiliates) on the other hand, which amendment involves (i) a change in actual or potential payments to or from any Company Entity exceeding seventeen million five hundred thousand dollars (U.S.\$17,500,000) in any Fiscal Year or eighty seven million five hundred thousand dollars (U.S.\$87,500,000) in the aggregate over the life of the contract, agreement, arrangement or understanding or (ii) a material reduction in the services, rights or privileges received by any Company Entity under the contract, agreement, arrangement or understanding without proportionate reduction in fees, royalties or other payments to AMD (or its respective Affiliates, provided that no Company Entity shall be deemed an AMD Affiliate for the purposes of this provision) thereunder;

(c) authorize any Company Entity to engage in or undertake any material activity unrelated to the Business (and the scope of license rights granted pursuant to the Fujitsu-FASL Patent Cross-License Agreement dated as of June 30, 2003 between Fujitsu and the Company shall not be deemed to limit in any manner the requirement that a Special Vote is necessary for any Company Entity to engage in or undertake any such activity). For purposes of this Section 7.7.2(c), “**Business**” shall mean all aspects related to the development, manufacture and sale of semiconductor devices (including single chip or multiple chip products), a substantial function of which is code and/or data storage;

(d) change the equity capital structure of any Company Entity, except for the issuance of employee options in Company equity interests;

(e) effect any distribution from the Company to its Members other than in cash or any distribution in cash other than in accordance with Article 5 of this Agreement;

(f) amend the charter documents of any Material Company Entity; or

(g) amend the charter documents of any other Company Entity that adversely and disproportionately affects Fujitsu or Fujitsu Member as compared to AMD or AMD Member.

For the purposes of sub-sections 7.7.2(a) and 7.7.2(b), it is agreed by the parties that various contracts under which AMD or its Affiliates provide services to Company Entities (including under the AMD Services Agreement (as defined in the Contribution Agreement) and the AMD Technology Services Agreement (as defined in the Contribution Agreement)) are considered a series of related contracts relating to the same or substantially similar subject matter so that the dollar thresholds set forth in sub-sections 7.7.2(a) and 7.7.2(b) apply to all such contracts taken collectively on an annual basis; and in determining whether any increase in amounts payable to AMD or an AMD Affiliate thereunder exceed such dollar thresholds, reductions in payments for services to AMD or an AMD Affiliate shall not be deemed to offset any portion of any increase.

7.7.3 10% Threshold. For so long as Fujitsu Member's Percentage Interest is at least ten percent (10%):

(a) effect any resolution to wind-up any Material Company Entity (unless the relevant governing documents or this Agreement expressly provide for "automatic" dissolution upon the happening of certain events); or

(b) effect the filing of any application or petition for bankruptcy, reorganization or other similar proceedings under Applicable Laws with respect to any Material Company Entity.

7.8 Limitations on Authority of Board of Managers

Notwithstanding any contrary provision of this Agreement, each Member agrees to vote its Units, and to cause Managers that it appoints to vote, in a manner that will cause the Company and each applicable Company Entity to refrain from taking any of the following actions:

7.8.1 30% Threshold. In addition to the restrictions benefiting Fujitsu Member in Sections 7.8.2 and 7.8.3, for so long as Fujitsu Member's Percentage Interest is at least thirty percent (30%):

(a) enter into any manufacturing or development joint venture, strategic alliance, similar arrangement or agreement with an integrated electronics manufacturer having the majority of its assets or business operations in Japan and annual semiconductor revenues in excess of one hundred billion yen (¥100,000,000,000);

(b) Prior to the end of the 4-Year Period, enter into a joint venture, strategic alliance, similar arrangement or agreement relating to manufacturing, memory product design or CMOS process development (referred to herein as the "**Core Business**") that involves the actual or potential contribution of cash or assets by the Company to such joint venture, or to a third party involved in a joint venture, strategic alliance, similar arrangement or agreement, exceeding fifty million dollars (U.S.\$50,000,000) in any Fiscal Year or two hundred fifty million dollars (U.S.\$250,000,000) in the aggregate over the life of the joint venture, strategic alliance, similar arrangement or agreement; *provided, however*, that this covenant shall not apply to (i) agreements for providing foundry services with entities that derive more than seventy-five percent (75%) of their revenues from providing foundry services (provided that such agreements do not include an investment by the Company in such entity, its Affiliates or capital equipment) or (ii) joint ventures, strategic alliances, similar arrangements or agreements for the assembly, pack, mark and test of semiconductor devices; or

(c) enter into any joint venture, strategic alliance, similar arrangement or agreement relating to activities outside of the Core Business and that involves the actual or potential contribution of cash or assets by the Company exceeding two hundred million dollars (U.S.\$200,000,000) in any Fiscal Year or one billion dollars (U.S.\$1,000,000,000) in the aggregate over the life of the joint venture, strategic alliance, similar arrangement or agreement.

7.8.2 20% Threshold. In addition to the restrictions benefiting Fujitsu Member in Section 7.8.3, for so long as Fujitsu Member's Percentage Interest is at least twenty percent (20%):

(a) notwithstanding anything in this Agreement to the contrary, allow any Company Entity to grant or issue any employee options to acquire equity interests in the Company; or

(b) allow any Company Entity to change its domicile if such change would result in significant adverse tax consequences to Fujitsu Member or Fujitsu.

7.8.3 Any Percentage Interest. For so long as Fujitsu Member maintains a Percentage Interest greater than zero percent (0%):

(a) do any act in contravention of this Agreement;

(b) except as provided for in this Agreement, knowingly perform any act that would subject any Member to liability for the debts, liabilities or obligations of the Company;

(c) subject to Units required to be issued pursuant to Section 4.3.2(d)(4), issue additional Units of the Company (or any rights to acquire additional Units) to any Person;

(d) fail to insure that the senior technical staff of the Company will include former employees of both AMD and Fujitsu and that input from such employees will be included and fully considered in decisions to materially modify the Technology Roadmap;

(e) **** facilities prior to ****;

(f) prior to ****, reduce the cumulative employee headcount (including seconded employees, if any) of **** facilities below the lesser of (i) **** of the cumulative employee headcount (including seconded employees) of such facilities at the Launch Date or (ii) **** of the cumulative headcount (excluding seconded employees) of such facilities at the Launch Date plus the number of employees seconded as of the Launch Date whose secondment period has not then ended plus the number of employees seconded as of the Launch Date who accepted employment with the Company or a Company Entity as of the end of such seconded employees' secondment period (other than dismissals of employees for cause or by voluntary separation);

(g) prior to ****, reduce the cumulative employee headcount (including seconded employees, if any) of **** facilities below the lesser of (i) **** of the cumulative employee headcount (including seconded employees) of such facilities at the Launch Date or (ii) **** of the cumulative headcount (excluding seconded employees) of such facilities at the Launch Date plus the number of employees seconded as of the Launch Date who accepted employment with the Company or a Company Entity as of the end of such seconded employees' secondment period (other than dismissals of employees for cause or voluntary separation);

(h) prior to **** any of the facilities used by ****;

(i) prior to ****, reduce the cumulative employee headcount (including seconded employees) of **** below the lesser of (i) **** of the cumulative employee headcount (including seconded employees) of such **** at the Launch Date or (ii) **** of the cumulative headcount (excluding seconded employees) of such **** at the Launch Date plus the number of employees seconded as of the Launch Date whose secondment period has not then ended plus the number of employees seconded as of the Launch Date who accepted employment with the Company or a Company Entity as of the end of such seconded employees' secondment period (other than dismissals of employees for cause or by voluntary separation);

(j) prior to ****, reduce the cumulative employee headcount (including seconded employees) of **** below the lesser of (i) **** of the cumulative employee headcount (including seconded employees) of such **** at the Launch Date or (ii) **** of the cumulative headcount (excluding seconded employees) of such **** at the Launch Date plus the number of employees seconded as of the Launch Date who accepted employment with the Company or a Company Entity as of the end of such seconded employees' secondment period (other than dismissals of employees for cause or voluntary separation);

(k) without limiting Section 7.8.3(e), prior to ****, **** facilities without providing at least six (6) months' prior written notice to AMD Member and Fujitsu Member or **** facilities without providing at least three (3) months' prior written notice to AMD Member and Fujitsu Member;

(l) without limiting Sections 7.8.3(f), 7.8.3(g), 7.8.3(i) and 7.8.3(j), prior to ****, reduce the cumulative employee headcount of **** facilities or the employee headcount of **** below the cumulative employee headcount of such facilities **** (as the case may be) at the Launch Date, without providing at least six (6) months' prior written notice of such reductions to AMD Member and Fujitsu Member (other than dismissals of employees for cause or voluntary separation); or

(m) prior to ****, reduce the employee headcount of **** facility below the employee headcount of such facility at the Launch Date without providing at least three (3) months' prior written notice of such reduction to AMD Member and Fujitsu Member (other than dismissals of employees for cause or voluntary separation).

7.9 Compensation of Managers

Except for reimbursement from the Company for out-of-pocket costs and expenses incurred by the Managers in the performance of their duties, the Managers shall not be entitled to any other compensation in their capacities as Managers unless otherwise agreed upon in writing by all of the Members.

7.10 Accounting; Records and Reports

7.10.1 Accounting and Fiscal Year. The books, records and accounts of the Company, including for all applicable tax purposes, will be maintained in accordance with such

methods of accounting as shall be determined by the Board of Managers. The fiscal year of the Company (“**Fiscal Year**”) shall correspond to that of AMD for as long as AMD Member and/or an Affiliate of AMD Member holds a greater than fifty percent (50%) Percentage Interest in the Company in the aggregate. The Company shall have a taxable year which complies with Section 706(b) of the Code.

7.10.2 Books and Records. The Board of Managers shall cause to be kept, at the principal place of business of the Company, or at such other location as the Board of Managers shall reasonably deem appropriate, full and proper ledgers, other books of account, and records of all receipts and disbursements, other financial activities, and the internal affairs of the Company for at least the current and past four (4) Fiscal Years. The Board of Managers shall also cause to be kept at such location copies of each of the following:

- (a) a current list of the full name and last known address of each Member, and the capital account, number of Units and Percentage Interest held by each Member;
- (b) a current list of the full name and last known address of each Manager;
- (c) the Certificate of the Company, any amendments to the Certificate, and executed copies of any powers of attorney granted for the purpose of executing the Certificate;
- (d) the Company’s federal, state and local income tax returns and reports, if any, for the seven (7) most recent years;
- (e) this Agreement and any amendments to this Agreement;
- (f) financial statements of the Company for the five (5) most recent Fiscal Years; and
- (g) minutes of meetings of the Board of Managers and the Members and any written consents of the Board of Managers or the Members for actions taken without a meeting.

7.10.3 Financial Reports. The Board of Managers shall also cause to be sent to each Member of the Company, the following:

- (a) within sixty (60) days after the Launch Date, the Company shall provide each Member with an unaudited balance sheet of the Company as of the Launch Date;
- (b) within one hundred fifty (150) days following the end of each Fiscal Year, a computation of the Company’s taxable income allocable to such Member, and within two hundred seventy-five (275) days following the end of each Fiscal Year Schedule K-1 to IRS Form 1065 and such other information as may be reasonably required by the Members for preparation of their respective federal, state and local income or franchise tax returns;

(c) a copy of the Company's federal, state and local income tax or information returns for each Fiscal Year, concurrent with the filing of such returns;

(d) within ninety (90) days after the end of each Fiscal Year or as soon thereafter as reasonably practicable, the Company shall provide each Member with an audited balance sheet, income statement and statement of cash flows for the year then ended;

(e) within forty-five (45) days after the end of each fiscal quarter or as soon thereafter as reasonably practicable, the Company shall provide each Member with an unaudited balance sheet, income statement and statement of cash flows for the year or quarter (as appropriate) then ended, prepared in accordance with GAAP, as well as such other financial information as any Member may reasonably request to enable such Member and its Affiliates to prepare their consolidated quarterly and annual financial statements; and

(f) As soon as reasonably practicable after the end of each fiscal month, the Company shall provide each Member with a written monthly report, including an unaudited consolidated statement of income (or loss) for the Company and such other financial information as a Member may reasonably request, for the most recent completed fiscal month of the Company. By no later than the close of business California time on the seventh (7th) calendar day of each calendar month, the Company shall also provide each Member a copy of such report for the preceding fiscal month on a best estimate basis.

7.10.4 Access to Company Books and Records.

(a) Members (personally or through an authorized representative) may, for purposes reasonably related to their Interests, during reasonable business hours (i) examine and copy (at their own cost and expense) the books and records of the Company, including the records listed in Section 7.10.2, and (ii) have access to the Company's management, plans, properties and other assets to conduct due diligence and other investigations (including, without limitation, environmental assessments) regarding the Business and assets of the Company at such Member's sole expense, and the Company shall reasonably cooperate with such Member in such due diligence and investigations.

(b) Subject to such reasonable standards as imposed by the Board of Managers, upon the request of any Member for purposes reasonably related to its Interest, the Board of Managers shall promptly deliver or cause to be delivered to the requesting Member, at the expense of the Company, a copy of the information required to be maintained under Sections 7.10.2(a) through 7.10.2(g).

(c) Any Member's request for documents or request to inspect or copy documents under this Section 7.10.4 (i) may be made by that Member or that Member's authorized representative and (ii) shall be made in writing and shall state the purpose of such demand.

(d) The Board of Managers shall promptly furnish to a Member a copy of any amendment to the Certificate or this Agreement.

(e) Except as specifically stated in an agreement among each of the Members and the Company, a Person that holds an Economic Interest but who is not a Member shall have no right to information concerning the business and affairs of the Company and no inspection rights.

7.11 Indemnification and Liability of the Managers

7.11.1 Indemnification. The Company shall indemnify and hold harmless each Manager (individually, an “**Indemnitee**”) to the fullest extent permitted by Applicable Law from and against any and all losses, claims, demands, costs, damages, liabilities, whether joint or several, expenses of any nature (including reasonable attorneys’ fees and disbursements), judgments, fines, settlements and other amounts (each an “**Indemnified Loss**”) arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved as a party or otherwise, relating to the performance or nonperformance of any act concerning the activities of the Company or by reason of the Indemnitee’s status as a Manager, regardless of whether the Indemnitee retains such status at the time any such Indemnified Loss is paid or incurred, if (a) the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company and, in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful, and (b) the Indemnitee’s conduct did not constitute a breach of his or her duty of loyalty to the Company or its Members or is an act or omission which involves intentional misconduct or a knowing violation of the law. The termination of an action, suit or proceeding by judgment, order, settlement, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified in clauses (a) or (b) above.

7.11.2 Expenses. Expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to this Section 7.11 shall be advanced by the Company prior to the final disposition of such claim, demand, action, suit, or proceeding.

7.11.3 Company Expenses. Any indemnification provided hereunder shall be satisfied solely out of the Company Assets, as an expense of the Company. No Member shall be subject to personal liability by reason of these indemnification provisions.

7.11.4 No Other Rights. The provisions of this Section 7.11 are for the benefit of the Indemnitees and shall not be deemed to create any rights for the benefit of any other Person; *provided, however*, that the indemnification rights provided in this Section 7.11 will inure to the benefit of the heirs, legal representatives, successors, assigns and administrators of the Indemnitee.

7.11.5 No Liability. No Indemnitee shall be liable to the Company or to any Member for any losses sustained or liabilities incurred as a result of any act or omission of any Manager or any such other Person if (a) the Manager acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company and, in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was

unlawful, and (b) the Manager's conduct did not constitute a breach of his or her duty of loyalty to the Company or its Members or is an act or omission which involves intentional misconduct or a knowing violation of the law.

7.11.6 Reliance Upon Agreement. To the extent that any Manager (each, a "**Responsible Party**") has, at law or in equity, duties (including, without limitation, fiduciary duties) to the Company, any Member or other Person bound by the terms of this Agreement, such Responsible Parties acting in accordance with this Agreement shall not be liable to the Company, any Member, or any such other Person for its good faith reliance on the provisions of this Agreement.

7.11.7 Fiduciary Duties. The only fiduciary duties a Manager owes to the Company and the Members are the fiduciary duties a director serving on the board of directors of a Delaware corporation would have under the DGCL, as interpreted by Delaware courts. Notwithstanding the foregoing, but subject to Section 7.6.8, a Manager shall not be required to recuse himself or herself from the Board of Managers' consideration of a matter in which the Member appointing such Manager may have a material financial interest. Such Manager shall be permitted to vote on such matter, and voting to approve such matter shall not in itself constitute a violation of such Manager's fiduciary duties.

7.12 Officers of the Company

7.12.1 Chief Executive Officer. The Company will employ a chief executive officer (the "**Chief Executive Officer**") to be selected by AMD Member for as long as it has a greater Percentage Interest than Fujitsu Member, subject to Fujitsu Member's approval, which shall not be unreasonably withheld. The Member that appoints the Chief Executive Officer shall have the right to appoint such individual as one of the Managers it is entitled to appoint under Section 7.2. In the event the Chief Executive Officer is not appointed as a Manager, the Chief Executive Officer shall have the right to attend meetings of the Board of Managers as a non-voting participant.

7.12.2 Duties and Powers of the Chief Executive Officer. The Chief Executive Officer of the Company shall, subject to the control of the Board of Managers, have general supervision, direction and control of the day-to-day affairs of the Company and shall report directly to the Board of Managers. Unless limited by the Board of Managers or this Agreement, he or she shall have the general powers and duties of management usually vested in the office of chief executive officer of corporations and shall have such other powers and duties as may be prescribed by the Board of Managers. In the absence or disability of the Chief Executive Officer, an Officer designated by the Board of Managers, shall perform all duties of the Chief Executive Officer.

7.12.3 Other Officers; Employment; Removal. The Company may also employ a chief financial officer ("**Chief Financial Officer**"), a secretary ("**Secretary**") and such other officers as elected by the Board of Managers, each of whom will be accountable to the Chief Executive Officer (the Chief Executive Officer, Chief Financial Officer, the Secretary and any other officers elected in accordance with this Section 7.12.3, each, an "**Officer**" and collectively,

the “Officers”). All Officers and the Chief Executive Officer shall be employed directly by the Company, except where AMD and Fujitsu agree in writing on a case-by-case basis that such Officer should be employed by either AMD or Fujitsu, in which case such Officer will be assigned to the Company through secondment or other arrangements, as agreed upon by AMD and Fujitsu. The Chief Executive Officer and any other Officer may be removed at any time upon an affirmative vote of the majority of the Board of Managers.

7.12.4 Duties and Powers of Chief Financial Officer. The Chief Financial Officer of the Company (a) shall have the custody of the corporate funds and securities of the Company, (b) shall keep and maintain, or cause to be kept and maintained, books and records of accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses and capital and (c) shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board of Managers. He or she shall disburse the funds of the Company as may be ordered by the Board of Managers and shall render to the Board of Managers at their request an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Company. The books of account shall at all reasonable times be open to inspection by any Manager.

7.12.5 Duties and Powers of Secretary.

(a) The Secretary shall attend (in person or by telephone conference) all meetings of the Board of Managers and all meetings of the Members (whether any of such meetings are in person, by telephone conference or both) and record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for any standing committees when requested by such committee. He or she shall give, or cause to be given, notice of all meetings of the Members and of the Board of Managers and shall perform such other duties as may be prescribed by the Board of Managers.

(b) The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Company’s transfer agent or registrar, as determined by resolution of the Board of Managers, a register, or a duplicate register, showing the names of all Members and their addresses, Economic Interests and voting interests, the number and date of certificates issued for the same (if any), and the number and date of cancellation of every certificate surrendered for cancellation (if any). The Secretary shall also keep all documents as may be required under the Act.

7.12.6 General Provisions Regarding Officers.

(a) The Board of Managers may, from time to time, designate Officers of the Company and delegate to such Officers such authority and duties as the Board of Managers may deem advisable and may assign titles (including, without limitation, president, vice-president and/or treasurer) to any such Officer. Unless the Board of Managers otherwise determines, if the title assigned to an Officer of the Company is one commonly used for Officers of a business corporation formed under the DGCL, then, subject to the terms of this Agreement, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are customarily associated with such office pursuant to the DGCL. Any number of titles may be held by the same Officer.

(b) Subject to all rights, if any, under any contract of employment, any Officer to whom a delegation is made pursuant to the foregoing shall serve in the capacity delegated unless and until such delegation is revoked by the Board of Managers for any reason or no reason whatsoever, with or without cause, or such Officer resigns.

(c) No Officer needs to be a resident or citizen of the United States.

(d) The only fiduciary duties an Officer of the Company owes to the Company and the Members are duties a similar officer of a Delaware corporation would have under the DGCL, as interpreted by Delaware courts.

7.13 Information Technology Steering Committee

The Company will establish an IT Steering Committee (the “**IT Steering Committee**”). The general purposes of the IT Steering Committee shall be: (1) to determine the Company’s overall information technology (“**IT**”) program; (2) to approve the Company’s IT plans and budgets; and (3) to coordinate and track the Company’s IT activities. On an annual basis, the IT Steering Committee shall provide to the Board of Managers an analysis and breakdown in reasonable detail of all IT costs incurred during the previous annual period, including a description of the amount of IT costs attributable to each of the following categories: Capex, R&D, G&A and cost of goods sold. The IT Steering Committee will include the Company’s information services manager, appropriate executives from Material Company Entities and such other Company employees as the Company may choose. AMD and Fujitsu may each appoint a non-voting advisory representative to the IT Steering Committee to advise the Company on IT issues; however, all final IT determinations will be made by the IT Steering Committee, subject to approval by the Board of Managers.

7.14 Personnel

7.14.1 Company Employees; Return. All employees shall be employed by the Company, unless both AMD and Fujitsu agree in writing on a case-by-case basis that such employee should be employed by either AMD or Fujitsu, then such employee shall be assigned to the Company through secondment or other arrangements, as agreed upon in writing by AMD, Fujitsu and the Company. Any Fujitsu employee permanently transferred to the Company may return to the employ of Fujitsu upon the written agreement of both the Company and Fujitsu, and any AMD employee permanently transferred to the Company may return to the employ of AMD upon the written agreement of both the Company and AMD, *provided, however*, that the re-employment of any Officer of the Company or other personnel of the Company that reports directly to the Chief Executive Officer or the Board of Managers shall require the approval of the Company, AMD and Fujitsu.

7.14.2 Certain FASL (Japan) Employees. With respect to certain employees of FASL (Japan) who are engineers, the Company may transfer selected engineers from FASL (Japan) to the Company and vice versa, such transfers being either temporary or permanent.

7.14.3 Standards of Business Conduct. For as long as AMD Member's Percentage Interest is at least fifty percent (50%), the Company will use its reasonable efforts to cause its employees and the employees of its subsidiaries to comply with AMD's Worldwide Standards of Business Conduct.

7.15 Human Resources Council

The Company shall, and shall cause each other Company Entity to, have compensation and benefits programs at its locations consistent with local practices. Incentive compensation programs for Company Entity employees will be tied to the Company's financial success and approved by the Board of Managers. The Company will form a human resources council (the "**HR Council**"), consisting of senior human resource employees from each of the Company's locations (including, with respect to Japan, at least one former Fujitsu employee who was, before his or her transfer to the Company, situated in Japan). The HR Council shall:

7.15.1 be headed by an executive of the Company who will report and be directly accountable to the Chief Executive Officer;

7.15.2 plan and implement headcount, budget, performance management systems, compensation and benefits programs and other human resource programs and systems as needed for the Company Entities, all in a manner generally and reasonably consistent with local practices;

7.15.3 consult with the Members in establishing the working terms and conditions (including a promotion approval matrix) for Transferred Employees, including the consideration and adoption of any changes to compensation and benefit plans or arrangements provided by Fujitsu to the Transferred Employees immediately prior to the transfer of employment to a Company Entity;

7.15.4 for so long as any Transferred Employee continues to be entitled to participate in any of the benefits provided by Fujitsu to such Transferred Employee immediately prior to the transfer of employment to a Company Entity, consult with Fujitsu regarding the matters referred to in Sections 7.15.3 and 7.15.5; and

7.15.5 consult with the Members on such other matters as may be agreed by the Members in writing.

7.16 Stock Option Plan

7.16.1 Stock Option Plans. Any stock option plans involving AMD shares will be financed by the Company. The Company will pay cash to AMD for the value of stock options granted by AMD to employees of a Company Entity. The value of such stock options will be calculated using the Black-Scholes valuation method using assumptions mutually agreed to by AMD Member and Fujitsu Member as soon as reasonably practicable following the Launch Date and adjusted thereafter as reasonably necessary and as reasonably agreed to by AMD Member and the Company and, during the 4-Year Period, with the consent of Fujitsu Member, which consent shall not be unreasonably withheld or delayed (the "**Black-Scholes Value**"). The

Black-Scholes Value of such stock options payable by the Company to AMD shall initially be reduced by fifteen (15%) percent (the “**Discounted Black-Scholes Value**”) to take into account the likelihood that optionees of a Company Entity will forfeit and/or fail to exercise a certain number of the stock options issued by AMD. AMD Member and Fujitsu Member shall meet on or about June 30 each year to consider adjustments to the payments made to AMD for stock options granted by AMD to employees of a Company Entity. Factors for adjustments to such payments to AMD include, but are not limited to, the employee turnover rate at a Company Entity, the accounting and tax treatment of the option grants and payments to AMD and the method for determining the value of the AMD stock options. The Company will pay AMD the Discounted Black-Scholes Value of a stock option in sixteen (16) equal quarterly installments plus interest at the applicable federal rate determined in accordance with Section 1274(d) of the Code. The payment of such quarterly installments shall commence on the last day of the quarter following the quarter in which the stock option was granted. AMD will consult with the HR Council with respect to stock option grants and will consider the following factors when considering stock option grants:

(a) whether the eligible employee is U.S.-based or Japan-based, it being understood that U.S.-based employees may receive a greater number of options than equivalent Japan-based employees, provided, however, that Japan-based executives at the level of Corporate Director and above will be eligible to receive the same number of stock options as their U.S.-based counterparts; and

(b) that all eligible employees on the U.S. payroll at a similar level of employment will have an equitable opportunity to receive option grants, regardless of whether the employee previously worked for AMD, FASL (Japan) or Fujitsu;

provided, however, that the actual grant to any employee will reflect such employee’s individual performance.

7.16.2 Merger or Acquisition of the Company or AMD.

(a) In the event of any merger, acquisition, consolidation or similar transaction to which the Company is a party (a “**Company Transaction**”) and in which the AMD stock options issued to Company Entity employees are assumed by a successor entity pursuant to the Company Transaction, the Company shall pay any remaining installments of the Discounted Black-Scholes Value of the options to such successor entity rather than AMD on the same terms and at the same times as set forth in Section 7.16.1.

(b) In the event of any merger, acquisition, consolidation or similar transaction to which AMD is a party (an “**AMD Transaction**”) and in which the AMD stock options issued to Company Entity employees are assumed by a successor entity pursuant to the AMD Transaction, the Company shall pay any remaining installments of the Discounted Black-Scholes Value of the options to such successor entity rather than AMD on the same terms and at the same times as set forth in Section 7.16.1.

(c) If, in connection with a Company Transaction or an AMD Transaction, the AMD stock options terminate, notwithstanding Section 7.16.1 above, the Company shall not be required to pay any remaining installments of the Discounted Black-Scholes Value of such terminated options to AMD or to any other Person.

7.16.3 **Stock Option Allocation.** Within thirty (30) days after the Launch Date, AMD shall grant AMD stock options to certain of the employees of the Company and other Company Entities including those who previously worked for Fujitsu and FASL (Japan). Without limiting the generality of the foregoing, such AMD stock options to be issued to such employees ranking at levels equal to and above manager shall be based on the allocation schedules set forth on **Exhibit G-1** and **Exhibit G-2**.

7.17 Maintenance of Insurance

7.17.1 During the term of the Company, the Company shall maintain (and shall maintain on behalf of each other Company Entity or shall cause each other Company Entity to maintain on its own behalf), with financially sound and reputable insurers, customary levels of workers' injury general liability insurance, automobile liability insurance and property damage insurance naming the Company, Fujitsu and AMD (and their applicable Affiliates) as "Additional Insureds" thereunder and other insurance with respect to liabilities, losses or damage to the assets, properties and businesses of the Company and the other Company Entities as would be customarily carried or maintained under similar circumstances by entities of established reputation engaged in similar businesses, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as are customary for entities engaged in similar businesses. Within thirty (30) days after the Launch Date and on an annual basis thereafter at least ten (10) days prior to each policy anniversary, the Company shall furnish the Members with (a) certificates of insurance or binders, in a form reasonably acceptable to all of the Members, evidencing all of the insurance required by the provisions of this Section 7.17 and (b) a schedule of the insurance policies held by or for the benefit of the Company Entities. Upon request, the Company will promptly furnish either of the Members with copies of all insurance policies, binders and cover notes or other evidence of such insurance relating to the insurance required to be maintained by the Company Entities. The schedule of insurance shall include the name of the insurance company, policy number, type of insurance, major limits of liability and expiration date of the insurance policies. Within thirty (30) days after the Launch Date, the Company shall provide to each of the Members a certificate from the Company's insurance broker or other evidence satisfactory to them that all insurance required to be maintained pursuant to this Section 7.17 is in full force and effect and that each of the Members has been named as a "Additional Insured" thereunder.

7.17.2 The Company shall maintain (and shall maintain on behalf of each other Company Entity or shall cause each other Company Entity to maintain on its own behalf) with financially sound and reputable insurers, overseas travel insurance and special event personal injury insurance.

7.18 Inspections and Proceedings

In the event that (a) any of the Company's (or any other Company Entities') plants are subject to inspection by any Governmental Authority, (b) any material action, suit, claim, hearing, arbitration, proceeding (public or private), audit or investigation is brought by or against any Company Entity, (c) there is a recall of any of the Company's products, or (d) the Company receives any default or demand notice relating to any material debt obligation of the Company or under any other material contract of the Company, the Company shall provide prompt written notice of any such events to each of the Members.

7.19 Confidential Information

7.19.1 Obligations. The parties acknowledge and agree that all proprietary or nonpublic information disclosed by one party (the "**Disclosing Party**") to another party (the "**Receiving Party**") in connection with the Transaction Documents (as defined in the Contribution Agreement), directly or indirectly, which information is (a) marked as "proprietary" or "confidential" or, if disclosed orally, is designated as confidential or proprietary at the time of disclosure and reduced in writing or other tangible (including electronic) form that includes a prominent confidentiality notice and delivered to the Receiving Party within thirty (30) days of disclosure, or (b) provided under circumstances reasonably indicating that it constitutes confidential and proprietary information, constitutes the confidential and proprietary information of the Disclosing Party ("**Confidential Information**"). The Receiving Party may disclose Confidential Information only to those employees who have a need to know such Confidential Information and who are bound to retain the confidentiality thereof under provisions (including provisions relating to nonuse and nondisclosure) no less restrictive than those required by the Receiving Party for its own confidential information. The Receiving Party shall, and shall cause its employees to, retain in confidence and not disclose to any third party (including any of its sub-contractors) any Confidential Information without the Disclosing Party's express prior written consent, and the Receiving Party shall not use such Confidential Information except to exercise the rights and perform its obligations under this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same procedures and degree of care which it uses to protect its own confidential information of like importance, and in no event less than reasonable care. The Receiving Party shall be fully responsible for compliance by its employees with the foregoing, and any act or omission of an employee of the Receiving Party shall constitute an act or omission of the Receiving Party. The confidentiality obligations set forth in this Section 7.19.1 shall survive any dissolution of the Company and/or termination of this Agreement.

7.19.2 Exceptions. Notwithstanding the foregoing, Confidential Information will not include information that: (a) was already known by the Receiving Party, other than under an obligation of confidentiality to the Disclosing Party or any third party, at the time of disclosure hereunder, as evidenced by the Receiving Party's tangible (including written or electronic) records in existence at such time; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party hereunder; (c) became generally available to the public or otherwise part of the public domain after its disclosure other than through any act or omission of the Receiving Party in breach of this Agreement; (d) was

subsequently lawfully disclosed to the Receiving Party by an Entity or person other than the Disclosing Party not subject to any duty of confidentiality with respect thereto; or (e) was developed by the Receiving Party without reference to any Confidential Information disclosed by the Disclosing Party, as evidenced by the Receiving Party's tangible (including written or electronic) records in existence at such time.

7.19.3 **Tax Information.** 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 Member or its Affiliates shall be permitted to disclose the tax treatment and tax structure of the Company effective on the Launch Date. This permission to disclose includes the ability of each Member or its Affiliates to consult, without limitation of any kind, any tax advisor regarding the tax treatment or tax structure of the Company. This provision is intended to comply with Section 1.6011-4(b)(3)(ii)(B) of the Regulations and shall be interpreted consistently therewith. The Members 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 Code Section 7525(a).

7.20 Other Activities

Except as otherwise provided in the Non-Competition Agreement, the Members, their respective Affiliates and the Managers may engage or invest in, and devote their time to, any other business venture or activity of any nature and description (independently or with others), whether or not such other activity may be deemed or construed to be in competition with the Company. Neither the Company nor any Member, Affiliate of a Member, or Manager shall have any right by virtue of this Agreement or the relationship created hereby in or to such other venture or activity of any Member or its Affiliates (or to the income or proceeds derived therefrom), and the pursuit thereof, even if competitive with the business of the Company, shall not be deemed wrongful or improper so long as such pursuit is not in violation of the Non-Competition Agreement.

ARTICLE 8. OPERATIONS

8.1 4-Year Operations Plan; Annual Budget

8.1.1 **Formulation and Approval.** The Company will operate in accordance with a rolling four (4)-year Operations Plan (the "**4-Year Operations Plan**"), which Plan shall be initially developed and agreed upon by Fujitsu and AMD, and amended from time to time by the Company and in no event less than annually in order to ensure that the Plan covers, at the end of each Fiscal Year looking forward, a four (4)-year period. The Board of Managers will be responsible for approving an annual budget (the "**Annual Budget**") presented by Officers of the Company on an annual basis. Officers of the Company will also present to the Board of Managers on a quarterly basis a rolling quarterly operating plan (the "**Rolling Quarterly Plan**") of at least six (6) fiscal quarters, the first four (4) fiscal quarters thereof to be consistent in all material respects with the Annual Budget when such first four (4) fiscal quarters are the same as

those covered in the Annual Budget. The Rolling Quarterly Plan shall be prepared in a manner consistent with the Company's financial statements and GAAP. Each of the Annual Budget and the Rolling Quarterly Plan shall describe the financing, research and development, general and administrative and marketing activities for the relevant time period covered.

8.1.2 Expenditures Requiring Approval. The following Company expenditures shall require approval by the Board of Managers:

(a) any Capex which would cause any specific sub-category of capital expenditures set forth in the Annual Budget to be exceeded by more than ten million dollars (U.S.\$10,000,000); and

(b) any expenditure which would cause the aggregate amount spent during any Fiscal Year on any Capex, G&A cost or R&D costs to exceed the amounts budgeted therefor by greater than ten percent (10%).

8.2 Headquarters

The Company's world headquarters shall initially be in Sunnyvale, California.

8.3 Wafer Fabrication

The Company shall initially conduct wafer fabrication at Fab 25 in Austin, Texas. In addition, FASL (Japan) will initially conduct wafer fabrication by contract to the Company at JV1, JV2 and JV3.

8.4 Assembly, Test, Marking and Packaging

The Company's wholly owned subsidiaries in Thailand, Malaysia and China shall initially conduct assembly, test, mark and pack by contract to the Company.

8.5 Product Design

The Company shall initially conduct product design and development work at facilities located in Sunnyvale, California and Austin, Texas; the Company's wholly owned subsidiaries or Affiliates of the Members in Penang, Malaysia, Hong Kong, and Tokyo and Kozoji, Japan shall initially conduct product design and development work by contract to the Company.

8.6 Contracting; Transactions Between Company and Members.

8.6.1 Company Option. The Company may, at its option, contract to its subsidiaries or to AMD and/or Fujitsu (or their respective Affiliates) on a cost-plus basis any business operations of the Company, including (a) wafer fabrication, (b) other manufacturing processes, (c) assembly, test, mark and pack and (d) research and development. The Company may also, at its option, contract to AMD or Fujitsu or their respective Affiliates other activities agreed upon by the Company and AMD or Fujitsu or their respective Affiliates, on a cost-plus

basis, including certain types of package research and development, module and integration research and development, and various administrative functions, such as payroll, IT, legal, financial reporting and tax. The Company may also engage third party contractors in its discretion.

8.6.2 Contract Terms. Without limiting Sections 7.7 and 7.8:

(a) the terms of any contract, agreement or arrangement into which the Company enters will be determined between the Company and the respective counter-party(ies);

(b) the terms of any contract, agreement or arrangement between any Company Entity, on the one hand, and any other Company Entity, a Member, or any Affiliate of a Member, on the other hand, shall be on an arm's length basis;

(c) any contracts, agreements or arrangements between (i) any Company Entity and AMD or an Affiliate of AMD on the one hand, and (ii) any Company Entity and Fujitsu or an Affiliate of Fujitsu on the other hand, that are of a similar nature shall be on substantially similar terms, unless there is a reasonable commercial basis for any difference, such as differing purchase volumes or other reasonable commercial differences; and

(d) in no event shall any counter-party to a contract, agreement or arrangement be permitted to enter into contracts, agreements or arrangements on behalf of, or otherwise legally bind or act in a manner that is legally binding on, the Company.

(e) any contracts, agreements or arrangements between any Company Entity, on the one hand, and AMD or an Affiliate of AMD or Fujitsu or an Affiliate of Fujitsu, on the other hand, or any amendment, supplement or other modification thereof or thereto, shall in each case be subject to the approval of the Board of Managers.

8.7 Access to Company Facilities

AMD or Fujitsu may gain access to the Company's facilities and assets (and the Company shall cause the other Company Entities to provide such access) in the course of their businesses, on a case-by-case basis, subject to arrangement with the Company and approval by the Board of Managers and subject to Section 7.19.

8.8 Inventory

An appropriately designated employee of the Company shall have responsibility for managing the Company's inventory and shall manage such inventory in a manner that is consistent with prudent business operations and cash management. Notwithstanding anything to the contrary in the foregoing, the Company's overall target unit inventory will be the amount of product in the process of being manufactured and the amount of finished product (including products consigned to a distributor) which have an aggregate value determined in accordance with the Company's standard accounting practices that does not exceed the aggregate manufacturing cost determined in accordance with the Company's standard accounting practices of products set forth in the Company's written product forecasts, taking into account the

Distributors' written forecasts, for the succeeding two fiscal quarters plus two (2) weeks (the "**Target**"), *provided that* the Company may create variances from the Target based on various factors, including, without limitation, extraordinary circumstances relating to demand shortfalls or opportunities, quick-turnaround business, obsolete or customized product, product warranty returns or stock rotation and die-bank reserve ("**Variances**"). An appropriately designated employee of the Company will report on the existing inventory level to the Board of Managers from time to time as part of its normal financial reporting activities, but in no event less frequently than quarterly. As part of such reports, if any Variance exists, such employee shall explain such Variance to the Board of Managers, and the Board of Managers may request that the Company take corrective action that it deems to be consistent with prudent inventory management (and taking into account the financial impact on the Company). In the event that any Variance (constituting excess inventory) is greater than twenty-five percent (25%) of the Target, such employee shall recommend action to the Board of Managers designed to eliminate such Variance, and the Board of Managers shall (a) in good faith require that the Company take action designed to eliminate such Variance (which may, but shall not be required to, include the actions recommended by an appropriate Officer), and (b) take any other action the Board of Managers deems appropriate.

8.9 Quarterly Beginning Plan

The Company, using as a basis the Forecasts (as defined in the AMD Distribution Agreement and the Fujitsu Distribution Agreement (the "**Distribution Agreements**")) by the Distributors, shall forecast and plan production quarterly for the current fiscal quarter and the subsequent five (5) fiscal quarters. The outcome of this forecasting and planning process shall be referred to as the "**Quarterly Beginning Plan**" or "**QBP**".

8.9.1 At least seventy-five (75) days prior to the beginning of each fiscal quarter, the Company shall develop and provide each Distributor with a forecasting template (the "**Quarterly Beginning Plan Template**" or "**QBP Template**") in a form to be agreed by the Company and each Distributor, which sets forth the Company's Products (as defined in the Distribution Agreements) for each Technology (as defined in the Distribution Agreements) for such fiscal quarter and each of the subsequent five (5) fiscal quarters. The Company may modify the QBP Template in reasonable respects.

8.9.2 The QBP shall be developed as follows: (i) on or before the end of the last week of the first month of each fiscal quarter, each Distributor shall complete the QBP Template and provide the Company with a non-binding forecast of its projected Product needs for each of the five (5) fiscal quarters following such fiscal quarter (collectively, the "**Parent Forecasts**"); (ii) promptly after the Company receives the Parent Forecasts, the Company will organize each of the Parent Forecasts on a Technology-by-Technology basis and to reflect a forecast for each Product within a particular Technology; (iii) the Company shall use the Parent Forecasts and the Product allocation rules, as described in the Distribution Agreements, to produce a preliminary QBP using commercially reasonable efforts to utilize available and approved incremental capacity to meet the Parent Forecasts; and (iv) if a Distributor fails to submit the forecast in a timely manner Company shall be under no obligation to consider such Distributor's forecast in the QBP.

8.9.3 The preliminary QBP shall be distributed as soon as is practical to the Distributors for review and comment. If no comments are received within ten (10) Business Days after the distribution of the preliminary QBP, the preliminary QBP shall be deemed adopted.

8.9.4 If requested by either Distributor, the Company shall meet with the Distributors (jointly or separately) as soon thereafter as is reasonably practical, at a time and location to be mutually agreed by each Distributor and the Company, to discuss the preliminary QBP to resolve any conflicts regarding Parent Forecasts in light of the Company's then-current estimates of production capacity (taking into account the Company's then-current estimates of wafer yield, die yield, cycle time and production capacity, which estimates shall be provided to the Distributors, on a Technology-by-Technology basis, at least ten (10) days prior to such meeting) for each of the succeeding five (5) fiscal quarters. At these meetings, each Distributor may (i) submit a revised demand Forecast which prioritizes such Distributor's Product demand within such Distributor's Product allocations as set forth in its respective Distribution Agreement or (ii) request additional Capacity as set forth in its respective Distribution Agreement. The Company may request each Distributor to provide specific documentation to support the requested change in either (i) or (ii) above, which each Distributor shall reasonably provide. The Company shall consider any requests and supporting documentation of the Distributors in the revision to the preliminary QBP. The Company shall have sole responsibility in the determination of the final QBP.

8.9.5 Thereafter, and in any event at least fifteen (15) days before the end of such fiscal quarter, the Company shall present the final QBP developed as provided above to the Board of Managers for approval.

8.9.6 Nothing in this Section 8.9 shall be deemed to modify in any respect the Product allocation rights and rules set forth in the Distribution Agreements.

8.10 Branding

Each product sold by the Company will have a single product brand and logo, regardless of whether such product is sold by AMD, Fujitsu or any other distributor or sales representative appointed by the Company in accordance with Sections 2.2 and 14 of the Fujitsu Distribution Agreement or Sections 2.2 and 14 of the AMD Distribution Agreement. The Company will coordinate product branding and logo activities with the branding activities of Fujitsu and AMD. Subject to the foregoing, the Company shall have sole responsibility for all product branding matters. The Company will bear all of its costs and expenses incurred in connection with Product branding.

8.11 FASL (Japan)

8.11.1 FASL (Japan) Purpose. During the 4-Year Period, the Company shall cause FASL (Japan)'s headquarters to be in Tokyo and FASL (Japan)'s functions to include: (a) marketing (for Japan and Asia in coordination with the Company's marketing personnel); (b) manufacturing (for the world-wide market); (c) research and development (for the world-wide market); and (d) administrative.

8.11.2 **President.** FASL (Japan) shall have one (1) president or similarly titled executive officer, who shall (a) be the chief executive officer of FASL (Japan), (b) have the authority and responsibility of a representative director (*daihyou torishimariyaku*) under the Japanese Commercial Code and (c) be responsible for the day-to-day operations of FASL (Japan), including with respect to employment related matters. Such executive officer shall also be appointed as an Executive Officer of the Company, and in such capacity shall be invited to attend Company meetings involving all of the Officers. Such executive officer shall initially be selected by Fujitsu and, for so long as Fujitsu holds at least a 30% Membership Interest, the Company shall cause the appointment of any successor thereto to be subject to the approval of Fujitsu, which approval shall not be unreasonably withheld or delayed.

ARTICLE 9. DISPOSITION AND TRANSFERS OF INTERESTS

9.1 Holding of Membership Interest

For so long as AMD or Fujitsu, directly or indirectly, maintains a Membership Interest in the Company, AMD or Fujitsu, as applicable, must own and hold such Membership Interest either (a) itself or (b) through one or more wholly owned (including indirect wholly owned) subsidiaries.

9.2 Transfer Moratorium

Except with respect to a breach of this Agreement as provided for in Section 10.6.2(a), until the expiration of the 4-Year Period, no Member may Transfer all or any portion of its Membership Interest to any other Person, nor shall AMD or Fujitsu sell or transfer, or allow to be sold or transferred, or in any way dispose of its ownership interest, either direct or indirect, of any wholly owned subsidiary (including any wholly owned indirect subsidiary) that owns, directly or indirectly, the Membership Interests held by AMD Member or Fujitsu Member, respectively; *provided, however*, that in the event that Fujitsu or AMD experiences a Change in Control at any time before the expiration of the 4-Year Period, such restrictions shall cease to apply to AMD Member (in the case of a Change in Control of Fujitsu) or Fujitsu Member (in the case of a Change in Control of AMD) and the applicable Member shall have the immediate right to Transfer any portion of its Membership Interest (whether by directly Transferring such portion of its Membership Interest, or by selling, transferring or otherwise disposing of its ownership interest of any wholly owned subsidiary (including wholly owned indirect subsidiaries) that owns, directly or indirectly, such portion of its Membership Interest)), in accordance with the procedures set forth in Section 9.3.

9.3 Transfers

After the expiration of the 4-Year Period or to the extent otherwise permitted under Section 9.2, a Member may Transfer any portion of its Membership Interest to any other Person, subject to this Section 9.3. In addition, together with any Transfer of any Membership

Interests to any Person in accordance with this Section 9.3, a Member may Transfer to such Person a portion of its interest in any promissory note (whether or not convertible) issued to such Member by the Company, *provided* that such portion does not exceed the portion of such Member's Membership Interest Transferred to such Person at such time.

9.3.1 Valuation Request. A Member wishing to Transfer all or part of its Membership Interest (a "**Transferring Member**") must provide a notice to the other Member requesting a valuation of the Company (the "**Valuation Request**"). Promptly following such request, the Members shall jointly obtain both an Initial Public Offering (market value) valuation ("**IPO Valuation**") and a Discounted Cash Flow valuation ("**DCF Valuation**") and, together with the IPO Valuation, the "**Valuations**"), in accordance with this Section 9.3, the costs of which shall be shared equally between the Members; *provided, however*, in the event that the Transferring Member determines, after receipt of the last completed Valuation, not to Transfer all or part of its Membership Interest pursuant to the process set forth in this Section 9.3, such requesting Member shall bear the entire cost of the Valuations.

9.3.2 IPO Valuation. Within ten (10) days from the date of receipt of the Valuation Request, each Member shall provide the other Member with a list of the names of any investment banks, accounting firms or valuation specialists hired or used by such Member or its Affiliates (including for this purpose, in the case of AMD Member, any Company Entity) for valuation of the Company or a material portion of its assets at any time after the date commencing twelve (12) months prior to the Launch Date and continuing through the Valuation Request date. Within fifteen (15) days from the date of receipt of the Valuation Request, the Members shall mutually select a Qualified Valuator to conduct the IPO Valuation. Each Member shall use reasonable efforts to cause the IPO Valuation to be completed within thirty (30) days following the selection of the Qualified Valuator. The Qualified Valuator shall only have a minimal role (or no role) in any Initial Public Offering of the Company's shares which results from the sale process set forth in this Section 9.3. The IPO Valuation shall be based, among other things, upon the then-current 4-Year Operations Plan, which shall be updated by the Company in order to take into account (a) changes in market conditions, (b) management's best assessment of the Company's prospects at the time of the Valuation Request, (c) the impact on the business of the Transferring Member reducing its Percentage Interest and (d) the costs that would need to be incurred by the Company in order to make the Company a stand alone entity. The Qualified Valuator shall finalize a price range on a per-share basis for the Membership Interests of the Company (assuming an offering size of at least one hundred million dollars (U.S.\$100,000,000) in gross proceeds) that could reasonably be expected to be obtained in an Initial Public Offering of the Company's shares, and shall submit to each Member a formal valuation opinion that has been approved by the Qualified Valuator's valuation/fairness committee. For purposes of this Section 9.3, the per share valuation amount of the IPO Valuation shall be the low-point of the Qualified Valuator's price range. Also for purposes of this Section 9.3, the term "**share**" as used herein refers to the applicable Unit (or a share of equity securities if the Company were converted from a limited liability company to a corporation).

9.3.3 Discounted Cash Flow Valuation. Within fifteen (15) days from the date of receipt of the Valuation Request, the Members shall mutually select a Qualified Valuator,

different than the Person selected to perform the IPO Valuation in Section 9.3.2, to conduct the DCF Valuation. Each Member shall use reasonable efforts to cause the DCF Valuation to be completed within thirty (30) days following the selection of the Qualified Valuator. The DCF Valuation shall be based, among other things, upon the then-current 4-Year Operations Plan (which shall have been updated by the Company in accordance with Section 9.3.2). The DCF Valuation shall finalize a valuation range on a per share basis for the Membership Interests of the Company, and shall submit to each Member a formal valuation opinion that has been approved by the Qualified Valuator's valuation/fairness committee. For purposes of this Section 9.3, the per share valuation amount of the DCF Valuation shall be the low-point of the Qualified Valuator's valuation range.

9.3.4 Review Period. Both Valuations shall be provided to each Member. The Transferring Member shall have a period of thirty (30) days from receipt of the last completed Valuation in which to review the Valuations, and determine whether it wishes to Transfer all or any part of its Membership Interest.

9.3.5 Offer. If the Transferring Member decides to sell all or any part of its Membership Interest, then within the thirty (30)-day period referred to in Section 9.3.4, the Transferring Member shall provide a written notice (the "**Offer Notice**") to the Non-Transferring Member setting forth the Transferring Member's binding offer to sell all or a part of its Membership Interest to the Non-Transferring Member. The Offer Notice shall include the following: (a) the number of Units that the Transferring Member desires to sell (the "**Transfer Shares**"); and (b) the lower of the IPO Valuation per share valuation amount and the DCF Valuation per share valuation amount, as each such amount is determined in accordance with Sections 9.3.2 and 9.3.3 (the "**Valuation Amount**").

9.3.6 Right of First Refusal. The Non-Transferring Member will have the right, for a period of sixty (60) days following the receipt of the Offer Notice, to elect to purchase the Transfer Shares at a per share price equal to the Valuation Amount (the "Right of First Refusal"). The Non-Transferring Member may assign this Right of First Refusal in whole or in part to a third party, *provided* that such third party must also exercise such assigned Right of First Refusal within such sixty (60)-day period. In the event that the third-party assignee exercises such Right of First Refusal within such sixty (60)-day period, such assignee shall complete the purchase of the Transfer Shares on the same terms and subject to the same conditions as the Non-Transferring Member; *provided, however*, that in no event shall the Transferring Member be obligated to offer financing in accordance with Section 9.3.8 to a third-party assignee. If the Non-Transferring Member and/or its assignee elect(s) to exercise the Right of First Refusal, it/they shall provide written notice to the Transferring Member within such sixty (60)-day period and shall consummate the purchase of the applicable Transfer Shares as promptly as practicable thereafter.

9.3.7 Manner of Exercise. The Right of First Refusal must be exercised by the Non-Transferring Member and/or its assignee(s) with respect to all or none of the Transfer Shares that represent up to and including ten percent (10%) of the outstanding shares of the Company. If the Transfer Shares constitute more than ten percent (10%) of the Company's outstanding shares, then, if exercised, the Right of First Refusal must be exercised by the

Non-Transferring Member and/or its assignee(s) with respect to no less than the portion of the Transfer Shares that constitutes ten percent (10%) of the Company's outstanding shares. To the extent that the Non-Transferring Member and/or its assignee(s) elect(s) to not exercise the Right of First Refusal, the Transferring Member shall have the right, but not the obligation, to sell the unsubscribed Transfer Shares pursuant to one of the methods described in Sections 9.3.9 or 9.3.10 below. For purposes of this Section 9.3.7, the percentage of outstanding shares being sold shall be the quotient obtained by dividing (a) the sum of the Transfer Shares being offered for sale plus all shares sold previously by the Transferring Member during a rolling two (2) year period measured from the date of the Valuation Request, by (b) the number of shares outstanding on the date of the Offer Notice.

9.3.8 **Financing.** The Transferring Member shall be required, at the Non-Transferring Member's request, to finance fifty percent (50%) of the Non-Transferring Member's aggregate purchase price of any Transfer Shares that represent in excess of five percent (5%) of the total number of shares of the Company outstanding as of the date of the Offer Notice. For the avoidance of doubt, the Transferring Member shall not be required to finance any portion of the aggregate purchase price paid for the Transfer Shares by any third-party assignee who has elected to purchase some or all of the Transfer Shares in accordance with Section 9.3.6. In addition, in the event that the Transferring Member has previously Transferred shares, once the Transferring Member has cumulatively transferred to the Non-Transferring Member (but not its assignee) an amount of its Membership Interest that constitutes five percent (5%) of the Company's outstanding shares, all subsequent transfers of additional shares by the Transferring Member to the Non-Transferring Member shall be subject to the financing provisions set forth in this Section 9.3.8. Financing shall be in the form of a three (3)-year note (the "**Financing Note**"), issued by the Non-Transferring Member to the Transferring Member, with the following terms:

(a) Interest on the Financing Note shall be paid quarterly in arrears, with interest to accrue quarterly at a rate per annum equal to ninety (90)-day LIBOR (adjusted as of the first business day of each fiscal quarter to reflect then-current ninety (90)-day LIBOR) plus a credit spread for companies comparable to AMD or Fujitsu, as applicable, as mutually determined by (a) AMD Member, (b) Fujitsu Member and (c) two (2) investment banks (one (1) selected by each of AMD Member and Fujitsu Member) retained for the purpose of assisting with such determination; *provided, however*, that in no event shall the interest rate be greater or less than two hundred (200) basis points from the initial interest rate of the Financing Note. Interest will be calculated on the basis of a three hundred sixty (360)-day year for the actual number of days elapsed.

(b) Principal on the Financing Note shall be paid as follows:

(1) On the first anniversary of the Financing Note, principal shall be repaid in an amount equal to the lesser of:

(A) the Percentage Sold *multiplied by* net income (as shown on the most recent Company financial statements, consistent with GAAP) for the most recently completed twelve (12) months; and

(B) the amount of cash paid and distributed (or the maximum amount of cash legally available for payment and/or distribution, even if not actually paid or distributed) to the Non-Transferring Member during the most recently completed twelve (12) months in accordance with Section 5.1, *provided, however*, that (1) with respect to Section 5.1.1(a), cash shall be treated as paid and distributed (or legally available for payment and/or distribution) only to the extent that the Non-Transferring Member is able to use net operating losses to offset any taxable income allocable to such party, and (2) with respect to Section 5.1.2(a), cash shall be treated as paid and distributed (or legally available for payment and/or distribution) only to the extent such payments are in respect of loans from the Non-Transferring Member to the Company.

(2) On the second anniversary of the Financing Note, principal shall be repaid in an amount equal to the lesser of:

(A) the Percentage Sold *multiplied by* net income (as shown on the most recent Company financial statements, consistent with GAAP) for the most recently completed twelve (12) months; and

(B) the amount of cash paid and distributed (or the maximum amount of cash available for payment and/or distribution, even if not actually paid or distributed) to the Non-Transferring Member during the most recently completed twenty-four (24) months in accordance with Section 5.1 (*provided, however*, that (1) with respect to Section 5.1.1(a), cash shall be treated as paid and distributed (or legally available for payment and/or distribution) only to the extent that the Non-Transferring Member is able to use net operating losses to offset any taxable income allocable to such party, and (2) with respect to Section 5.1.2(a), cash shall be treated as paid and distributed (or legally available for payment and/or distribution) only to the extent such payments are in respect of loans from the Non-Transferring Member to the Company), *less* any amounts paid to the Transferring Member pursuant to Section 9.3.8(b)(1).

(3) On the third anniversary of the Financing Note, the outstanding principal balance of the Financing Note (together with interest thereon and all other amounts due thereunder) shall be repaid in full.

(c) For purposes of this Section 9.3.8, “**Percentage Sold**” shall be calculated by *dividing* (A) the number of shares being acquired by the Non-Transferring Member by (B) the total number of shares outstanding on the date of the Offer Notice.

(d) Repayment of the Financing Note shall be secured by a first-priority, perfected security interest over all the Transfer Shares being sold by the Transferring Member to the Non-Transferring Member. The Non-Transferring Member and the Transferring Member (if retaining any Membership Interest in the Company) shall execute and deliver all documents, and take all other actions, necessary to perfect and maintain the Transferring Member’s first-priority security interest in such Transfer Shares.

(e) If the Non-Transferring Member sells any portion of its Membership Interest while there is still any amount outstanding under the Financing Note, then the Non-Transferring Member will be deemed to have first sold the Transfer Shares, and the Financing Note shall be immediately prepaid to the extent of all proceeds from such sale.

9.3.9 Third Party Sales. If the Right of First Refusal is not exercised with respect to any portion of the Transfer Shares by the Non-Transferring Member and/or its assignee(s), then the Transferring Member shall have the right, but not the obligation, to attempt to sell the unsubscribed Transfer Shares to a third party pursuant to the following process. For the avoidance of doubt, the Transferring Member shall not have the right to proceed to the Public Offering process set forth in Section 9.3.10 before fully completing the third-party sale process set forth in this Section 9.3.9, unless otherwise consented to by the Non-Transferring Member.

(a) As the initial step in the process, the Members shall jointly prepare an initial list of qualified potential acquirers (each, a “**Potential Acquirer**”, and collectively, the “**Potential Acquirers**”) of the unsubscribed Transfer Shares. For the avoidance of doubt, the list of Potential Acquirers shall be subject to the approval of the Non-Transferring Member, such approval not to be unreasonably withheld.

(b) Upon completion of the initial list of Potential Acquirers (such date of completion, the “**Offer Commencement Date**”), the Transferring Member may then offer the applicable Transfer Shares for sale to any or all of the Potential Acquirers. The Members will participate in a joint sale process, but in no event shall the Non-Transferring Member have the right to participate in the Transferring Member’s negotiations with any Potential Acquirer.

(c) Each Potential Acquirer shall have a period of sixty (60) days from the Offer Commencement Date (the last day of such period, the “**Initial Bid End-Date**”) in which to submit an initial non-binding bid for the applicable Transfer Shares (or a shorter period if both Members determine in good faith that further bona fide bids are not reasonably likely to be received before the end of such sixty (60)-day period).

(d) Each Potential Acquirer that has submitted an initial bid shall have a period of thirty (30) days, or up to sixty (60) days, at the Non-Transferring Member’s option, if the Non-Transferring Member determines in good faith that such extension is warranted to accommodate a bona fide bidder, from the Initial Bid End-Date in which to submit a final bid for the applicable Transfer Shares (the last day of such period, the “**Final Bid End-Date**”).

(e) The Transferring Member shall have a period of twenty (20) days, or up to thirty (30) days, at the Non-Transferring Member’s option, if the Non-Transferring Member determines in good faith that such extension is warranted to accommodate a bona fide bidder, from the Final Bid End-Date in which to consummate the sale of the applicable Transfer Shares (the last day of such period, the “**Sale End-Date**”).

(f) The Members may mutually agree to extend any of the time periods set forth above.

(g) No sale of the applicable Transfer Shares to a Potential Acquirer shall be effected except at a value that is equal to or greater than the Valuation Amount. In addition, in the event that the sale of the applicable Transfer Shares by the Transferring Member to a Potential Acquirer includes the transfer of strategic and/or governance rights relating to the Company and/or the Non-Transferring Member (including rights relating to the appointment of Managers (Section 7.2), and the matters requiring a Special Vote (Section 7.7) (i.e., any rights in excess of Economic Rights)), such sale shall be subject to the approval of the Non-Transferring Member, such approval not to be unreasonably withheld.

9.3.10 Public Offering. If no bids are received at either the Initial Bid End-Date or the Final Bid End-Date with a per share purchase price at least equal to the Valuation Amount, or if the sale of the applicable Transfer Shares is not able to be consummated by the Sale End-Date, then the Transferring Member shall have the right, but not the obligation, to sell the applicable Transfer Shares through the following underwritten public offering process (a “**Public Offering**”).

(a) If the Transferring Member desires to sell the applicable Transfer Shares in a Public Offering, the Transferring Member must provide the Company with written notice requesting that the Company file a registration statement under the Securities Act covering the registration of the applicable Transfer Shares, within fifteen (15) days from the last to occur of (i) the Initial Bid End-Date, if no *bona fide* bids are received with a per share purchase price at least equal to the Valuation Amount, (ii) the Final Bid End-Date, if no *bona fide* final bids are received with a per share purchase price at least equal to the Valuation Amount, and (iii) the Sale End-Date, if the sale of the applicable Transfer Shares is not able to be consummated by the Sale-End Date.

(b) Upon receipt of such notice from the Transferring Member, the Company will promptly, and in no event less than ten (10) days of the receipt thereof, give written notice of the Transferring Member’s request to the Non-Transferring Member. The Non-Transferring Member shall, subject to the conditions set forth herein, have the right, by giving written notice to the Company within fifteen (15) days after receipt of the Company’s notice, to include in such Public Offering such of its shares as it elects in such notice to the Company (the Transferring Member and the Non-Transferring Member, if it elects to include some or all of its shares in the Public Offering, are referred to collectively as the “**Selling Members**” and individually as a “**Selling Member**”). The Company shall also have the right, subject to the conditions set forth herein, to include in such Public Offering any number of shares as it so elects.

(c) The right of any Selling Member to include its shares in such registration will be conditioned upon such Selling Member’s participation in the underwriting and the inclusion of such Selling Member’s shares in the underwriting to the extent provided herein. Each Selling Member proposing to distribute its shares through such underwriting will enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting in accordance with Section 9.3.10(g).

(d) Notwithstanding anything to the contrary in the foregoing, if the managing underwriter advises the Company that the total amount of shares requested to be included in the Public Offering exceeds the amount that the underwriter in its discretion determines is compatible with the success of the Public Offering, then the Company will so advise each Selling Member that would otherwise have shares included in such Public Offering pursuant hereto, and the shares that may be included in the underwriting will be as follows (in the following order of priority): first, the applicable Transfer Shares; second, the shares included for sale by the Non-Transferring Member; and third, the shares included for sale by the Company. For the avoidance of doubt, no Transfer Shares shall be excluded unless and until all other shares of the Non-Transferring Member and the Company have been excluded. Any shares excluded or withdrawn from such underwriting will be withdrawn from the registration

(e) The Non-Transferring Member (if it is not also a Selling Member) shall have the right to purchase its pro-rata portion (based on its Percentage Interest at the time of the Public Offering) of the shares being sold in the Public Offering.

(f) When required to effect the registration of any shares pursuant to this Section 9.3.10, the Company will, as expeditiously as possible (provided that if the Company furnishes to the Member(s) requesting such registration a copy of a resolution of the Board of Managers certified by the Secretary of the Company stating that in the good faith judgment of the Board of Managers it would be seriously detrimental to the Company and its Members for such registration statement to be filed at such time, the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request for registration, provided further that such request may not be exercised more than one time in any twelve (12) month period):

(1) prepare and file with the SEC a registration statement with respect to the applicable Transfer Shares (and the other shares included by the other Selling Members and/or the Company) and use commercially reasonable efforts to cause such registration statement to become effective as expeditiously as possible, and keep such registration statement effective until the distribution contemplated in the registration statement has been completed, *provided* that prior to the filing of the registration statement with the SEC, the Company will have furnished counsel for each Member with copies of all documents proposed to be filed and obtained the approval of such counsel, which approval shall not be unreasonably withheld or delayed, in respect of all disclosures therein relating to such Member;

(2) notify each Selling Member of the effectiveness of the registration statement and prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all shares covered by such registration statement;

(3) furnish to each Selling Member (i) a draft copy of the registration statement and (ii) such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as it may reasonably request in order to facilitate the disposition of shares owned by it;

(4) use commercially reasonable efforts to (i) register and qualify the shares covered by such registration statement under such other securities or “blue sky” laws of such jurisdictions as may be reasonably requested by each Selling Member and do all other acts and things that may be necessary or desirable to enable the Selling Members to consummate their public sale or other disposition of the shares in such states, *provided* that the Company will not be required in connection therewith or as a condition thereto to qualify to do business, where not otherwise required, or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act, and (ii) cause such shares to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company to enable the disposition of such shares;

(5) enter into and perform its obligations under the underwriting agreement, in usual and customary form, with the managing underwriter of such offering and take such other actions as the underwriters reasonably deem necessary to expedite or facilitate the disposition of the shares (including, without limitation, effecting a stock split or combination or causing its officers to participate in “road shows”);

(6) notify each Selling Member covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of (i) the issuance of any stop order by the SEC suspending the effectiveness of such registration statement or the initiation of any proceedings by any Person to such effect, and promptly use commercially reasonable efforts to obtain the release of such suspension, or (ii) the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading and promptly furnish to each Selling Member copies of a supplement or amendment of such prospectus as may be necessary to correct such misstatement or omission;

(7) cause all such shares registered pursuant hereunder to be listed on a national securities exchange or the Nasdaq National Market (or, if the Company’s shares are already listed, on each securities exchange on which similar securities issued by the Company are then listed);

(8) provide a transfer agent and registrar for all shares registered pursuant hereunder and a CUSIP number for all such shares, in each case not later than the effective date of such registration and use commercially reasonable efforts to cause the transfer agent to remove restrictive legends on the securities covered by such registration; and

(9) permit each Selling Member requesting such registration or their counsel, the managing underwriter, and the accountants and counsel to the underwriters, to conduct a due diligence investigation of Company, including, without limitation, the inspection of properties of the Company and financial and other records and corporate proceedings and access to Company management and the Company Accountant to supply all information reasonably requested by each Selling Member, underwriters and their counsel.

(g) Underwriters for the Public Offering shall be selected mutually by each Selling Member and the Company. Subject to Section 9.3.10(h), all expenses incurred by the Company in connection with registrations, filings and qualifications made for purposes of this Section 9.3.10, including, without limitation, all registration, filing and qualification fees (including “blue sky” fees), printer and accounting fees, and fees and disbursements of counsel for the Company, shall be borne by all Selling Members (and the Company, if the Company elects to include any shares in the Public Offering), on a pro rata basis based on the number of shares included in the Public Offering.

(h) If the managing underwriter advises the Company that consummation of the Public Offering requires that the Company convert from a limited liability company to a corporation, the Company will promptly take all actions, and the Members will approve all actions and cause the Board of Managers to approve all actions, reasonably necessary or useful for such conversion effective immediately prior to the closing of the Public Offering. AMD Member shall bear all necessary attorneys’, accountants’ and filing fees and expenses and any sales and/or transfer taxes incurred by the Company in connection with the conversion of the Company from a limited liability company to a corporation as part of the Public Offering.

(i) Each Member shall furnish the Company and the managing underwriter with such information regarding itself, the shares held by it and such other information as reasonably requested by the Company or the managing underwriter in order to satisfy the requirements applicable to the registration of the Selling Members’ shares.

(j) Any Transfer Shares sold pursuant to a Public Offering shall only be sold at a per share price equal to or in excess of the Valuation Amount. If such a minimum price cannot be obtained, then a Public Offering cannot be consummated, and the sale process shall conclude.

(k) In the event of a Public Offering, the Company and each Selling Member will enter an indemnification agreement, pursuant to which the Company and each Selling Member, to the fullest extent permitted by law, will agree to indemnify and hold harmless each other and certain other persons from and against certain claims, damages and expenses arising under applicable securities laws in connection with the Public Offering. Such indemnification agreement may, but need not, be included in the underwriting agreement referenced in clause (f)(5) of this Section 9.3.10 above and shall in any event contain usual and customary terms and conditions for such agreements.

9.4 Limitation on Number of Valuation Requests

Following submission of a Valuation Request, the requesting Member shall not have the right to submit another Valuation Request until one (1) year after the conclusion of the sale process relating to the submitted Valuation Request. However, in the event the Transferring Member submits a Valuation Request, but after receipt of the Valuations determines not to transfer any of its Membership Interest, such Transferring Member shall not have the right to submit another Valuation Request until two (2) years from the date of receipt of the last completed Valuation relating to the submitted Valuation Request.

9.5 Further Restrictions on Transfer

Notwithstanding any contrary provision in this Agreement, any otherwise permitted Transfer shall be null and void if:

- 9.5.1 except as provided in Section 9.3.10, such Transfer requires the registration of such Transferred Interest pursuant to any applicable federal or state securities laws;
- 9.5.2 such Transfer causes the Company to become a “publicly traded partnership,” as such term is defined in Section 7704(b) of the Code;
- 9.5.3 such Transfer subjects the Company to regulation under the Investment Company Act, the Investment Advisers Act or the Employee Retirement Income Security Act of 1974, as amended;
- 9.5.4 such Transfer results in a violation of Applicable Laws; or
- 9.5.5 such Transfer is made to any Person who lacks the legal right, power or capacity to own such Interest.

9.6 Rights of Assignees

Until such time, if any, as a transferee of any permitted Transfer pursuant to this Article 9 is admitted to the Company as a Substitute Member pursuant to Section 9.8: (i) such transferee shall be an Assignee only, and only shall receive, to the extent Transferred, the distributions and allocations of income, gain, loss, deduction, credit, or similar item to which the Member which Transferred its Membership Interest would be entitled, and (ii) to the fullest extent permitted by Applicable Law, such Assignee shall not be entitled or enabled to exercise any other rights or powers of a Member, such other rights remaining with the transferring Member. In such a case, the transferring Member shall remain a Member even if it has Transferred its entire Economic Interest in the Company to one or more Assignees. In the event any Assignee desires to make a further assignment of any Economic Interest in the Company, such Assignee shall be subject to all of the provisions of this Agreement to the same extent and in the same manner as any Member desiring to make such an assignment.

9.7 Admissions and Withdrawals

No Person shall be admitted to the Company as a Member after the Launch Date except in accordance with Section 9.8. Except as otherwise specifically set forth in Section 9.9, no Member shall be entitled to retire or withdraw from being a Member of the Company without the written consent of each other Member, which consent may be given or withheld in each Member’s sole and absolute discretion. No admission or withdrawal of a Member shall cause the dissolution of the Company. Any purported admission or withdrawal which is not in accordance with this Agreement shall be null and void.

9.8 Admission of Assignees as Substitute Members

9.8.1 Conditions. An Assignee shall become a Substitute Member immediately, upon the satisfaction of each of the following conditions:

- (a) the assignor of the Interest Transferred sends written notice to the Board of Managers requesting the admission of the Assignee as a Substitute Member and setting forth the name and address of the Assignee, the Percentage Interest Transferred by the Transferring Member to the Assignee, and the effective date of the Transfer;
- (b) Except in connection with Transfers pursuant to Section 9.3, Members holding a majority of the Percentage Interests held by Non-Transferring Members with respect to the Transfer consent in writing to such admission, which consent may be given or withheld in such Member's sole and absolute discretion;
- (c) the Company receives from the Assignee (i) an executed Joinder Agreement substantially in the form of Exhibit B, (ii) copies of any instruments of Transfer evidencing the Transfer and (iii) an executed counterpart of the Non-Competition Agreement; and
- (d) Assignee's receipt of its Membership Interest in compliance with the provisions of this Agreement.

9.8.2 Amendment. Upon the admission of any Substitute Member, Exhibit A shall be amended to reflect the name, address and Percentage Interest of such Substitute Member and to eliminate or adjust, if necessary, the name, address and Percentage Interest of the predecessor of such Substitute Member.

9.9 Withdrawal of Members

If a Member has Transferred all of its Membership Interest to one or more Assignees, then such Member shall be deemed to have withdrawn from the Company if and when all such Assignees have been admitted as Substitute Members in accordance with this Agreement.

9.10 Compliance With IRS Safe Harbor

The Board of Managers shall monitor the Transfers of interests in the Company to determine (i) whether such interests are being traded on an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code, and (ii) whether additional transfers of interests would result in the Company being unable to qualify for at least one of the "safe harbors" set forth in Regulations Section 1.7704-1 (or such other guidance subsequently published by the Internal Revenue Service setting forth safe harbors under which interests will not be treated as "readily tradable on a secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code) (the "**Safe Harbors**"). The Board of Managers shall take all steps reasonably necessary or appropriate to prevent any trading of interests or any recognition by the Company of transfers made on such markets and, except as otherwise provided herein, to ensure that at least one of the Safe Harbors is met.

ARTICLE 10.
DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COMPANY;
EFFECT OF BREACH

10.1 Limitations

The Company may be dissolved, liquidated, and terminated only pursuant to the provisions of this Article 10, and the parties hereto do hereby irrevocably waive, to the extent permitted by Applicable Law, any and all other rights they may have to cause a dissolution, liquidation or termination of the Company or a sale or partition of any or all of the Company Assets in connection with such dissolution or liquidation.

10.2 Exclusive Causes

Notwithstanding the Act, the following and only the following events shall cause the Company to be dissolved, liquidated, and terminated:

- (a) by the election of all of the Members;
- (b) the entry of a decree of judicial dissolution pursuant to §18-802 of the Act; or
- (c) at any Member's election, if the Company ceases operation for more than six (6) months unless due to force majeure.

To the fullest extent permitted by law, any dissolution of the Company other than as provided in this Section 10.2 shall be a dissolution in contravention of this Agreement.

10.3 Effect of Dissolution

The dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until it has been wound up and its assets have been distributed as provided in Section 10.5.1 of this Agreement. Notwithstanding the dissolution of the Company, prior to the termination of the Company, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

10.4 No Capital Contribution Upon Dissolution

Each Member shall look solely to the Company Assets for all distributions with respect to the Company, its Capital Contribution thereto, its Capital Account and its share of Net Profits or Net Losses, and shall have no recourse therefor (upon dissolution or otherwise) against any other Member. Accordingly, if any Member has a deficit Capital Account balance (after giving effect to all contributions, distributions and allocations for all taxable years, including the

year during which the liquidation occurs), then such Member shall have no obligation to make any Capital Contribution with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

10.5 Liquidation

10.5.1 Upon dissolution of the Company, the Board of Managers (or other Person(s) designated by a decree of court) shall act as the “**Liquidators**” of the Company. The Liquidators shall liquidate the Company Assets, and after allocating (pursuant to Article 6 of this Agreement) all income, gain, loss and deductions resulting therefrom, shall apply and distribute the proceeds thereof as follows:

(a) first, to (i) the payment of the obligations of the Company to third parties, including, but not limited to and on a *pari passu* basis, taxes, debts, lease and other payments to Persons other than Members or their Affiliates; (ii) the expenses of liquidation; and (iii) the setting up of any reserves for contingencies, debts or liabilities to Persons other than the Members or their Affiliates, whether the whereabouts of the creditor is known or unknown, which the Board of Managers may consider necessary;

(b) thereafter, amounts due to either Member or their respective Affiliates (other than a Company Entity) pursuant to intellectual property license agreements, consulting agreements, services agreements, subcontracting agreements, lease agreements and other similar agreements, but excluding any Member Debt Financing or Member Guaranteed Financing;

(c) thereafter, to the repayment, on a *pari passu* basis, of any Member Debt Financing or Member Guaranteed Financing;

(d) thereafter, to the setting up of any reserves for contingencies, debts or liabilities to Members or their Affiliates, which the Board of Managers may consider necessary; and

(e) thereafter, to the Members in proportion to the positive balances in the Members’ respective Capital Accounts, determined after taking into account all Capital Account adjustments for the Company’s taxable year during which such liquidation occurs, by the end of the taxable year in which such liquidation occurs or, if later, within ninety (90) days after the date of the liquidation.

10.5.2 Notwithstanding Section 10.5.1 of this Agreement, in the event that the Board of Managers determines that an immediate sale of all or any portion of the Company Assets would cause undue loss to the Members, the Board of Managers, in order to avoid such loss to the extent not then prohibited by the Act, may either defer liquidation of and withhold from distribution for a reasonable time any Company Assets except those necessary to satisfy the Company’s debts and obligations, or, subject to Section 5.5, distribute the Company Assets to the Members in kind (in accordance with the second sentence of Section 10.5.1).

10.6 Effect of Breach of Operations Shortfall Funding Requirement

Until the expiration of the 4-Year Period, either AMD Member's or Fujitsu Member's failure to fund its pro rata portion of (i) an Operations Shortfall Amount pursuant to Section 4.4 or (ii) any other financing required pursuant to the terms of this Agreement shall be a "**Breach**" (such Member so failing to fund, the "**Breaching Member**"). Upon the occurrence of a Breach, the non-breaching Member (the "**Non-Breaching Member**") shall have the following rights and remedies:

10.6.1 Non-Material Breach: In the event of a Breach by the Breaching Member, the Non-Breaching Member shall have the following rights:

(a) without being deemed a Breach, the Non-Breaching Member may elect to withhold the funding of its pro rata portion of the Operations Shortfall Amount (the "**Non-Breaching Member's Amount**"), or if the Non-Breaching Member elects to withhold the Non-Breaching Member's Amount but has already advanced the Non-Breaching Member's Amount to the Company, then AMD Member and Fujitsu Member shall cause the Company to refund the Non-Breaching Member's Amount to the Non-Breaching Member; however, it is understood that AMD Member, Fujitsu Member and the Company shall reasonably agree upon a mechanism to prevent such an advance by a Non-Breaching Member; or

(b) Within ten (10) days of the Breach, the Non-Breaching Member may elect to fund the Non-Breaching Member's Amount and a portion or all of the Breaching Member's pro rata portion of the Operations Shortfall Amount (such amount actually funded by the Non-Breaching Member on behalf of the Breaching Member, the "**Breaching Member's Amount**"). In exchange for funding the Breaching Member's Amount, the Company will issue to the Non-Breaching Member a convertible note in the form attached hereto as Exhibit F (a "**Breach Convertible Note**") with a principal amount equal to the Breaching Member's Amount.

(1) Interest. Each Breach Convertible Note shall bear interest at a per annum rate described in Exhibit F.

(2) Ranking. Notwithstanding anything in Article 5 or any other provisions of this Agreement to the contrary, each Breach Convertible Note shall rank senior to all other amounts payable by the Company to the Breaching Member (other than payments in respect of Taxes in accordance with Section 5.1.1(a)). Accordingly, to the extent that any amounts are payable by the Company to the Breaching Member in respect of any other debt or distributions of any kind, such amounts shall be paid to the Non-Breaching Member to be applied (i) first, against accrued interest under the Breach Convertible Note and (ii) second, against outstanding principal under the Breach Convertible Note.

(3) Conversion. Notwithstanding the maturity date of any Breach Convertible Note, such Breach Convertible Note shall be convertible on or after the date that is the earlier of (a) the date of delivery of an Offer Notice by the Breaching Member and (b) the date first after the expiration of the Cure Period; provided, however, that when the Cure

Period no longer applies, each Breach Convertible Note may be converted at any time on or after the date of issuance thereof. The Breach Convertible Note shall be convertible into that number of Units equal to one hundred twenty percent (120%) of the number of Units that would be received following the procedures set forth in (and the conversion formula used therein) with respect to a comparable convertible note in Section 4.3.2(d)(4); (provided, however, that (i) the Valuation Amount for this purpose shall be determined by a Qualified Valuator selected by the Non-Breaching Member and approved by the Breaching Member, which approval shall not be unreasonably withheld or delayed, (ii) such Qualified Valuator shall complete the valuation within forty-five (45) days after the appointment thereof, using any appointment method or methods the Qualified Valuator deems appropriate and (iii) the costs of such valuation shall be borne by the Company).

10.6.2 Material Breach. In the event of a Material Breach by a Breaching Member, the Non-Breaching Member shall have the rights set forth in Section 10.6.1, *plus*:

(a) Following the Cure Period, the Non-Breaching Member shall have the right to sell any or all of its Membership Interests to a third party without being subject to the transfer procedures set forth in Article 9 (provided that during any such Cure Period, the Non-Breaching Member shall have the right to approach potential purchasers regarding the sale of its Membership Interests).

ARTICLE 11. AMD GUARANTY

11.1 Guaranty

Subject to the limitations expressly set forth in this Article 11, AMD hereby, absolutely, unconditionally and irrevocably, guarantees (this “**AMD Guaranty**”) by way of an independent obligation to the Company and Fujitsu and Fujitsu Member (a) the due, prompt and faithful performance by AMD Member of all undertakings, obligations, required acts and performances of AMD Member under or arising out of this Agreement, and (b) the due and punctual payment of all amounts due and payable by AMD Member under or arising out of this Agreement after the date hereof, when and as the same shall arise and become due and payable in accordance with the terms of and subject to the conditions contained in this Agreement (collectively, the “**AMD Guaranteed Obligations**”).

11.2 AMD Guaranteed Obligations

This is a guaranty of payment and performance and not of collection only. If for any reason whatsoever AMD Member shall fail or be unable to perform or comply with any of its AMD Guaranteed Obligations, AMD shall promptly upon receipt of notice thereof from the Company or Fujitsu Member, as applicable, (a) pay or cause to be paid in lawful money of the United States the unpaid AMD Guaranteed Obligations then due and payable (at the place specified and in the amounts and to the extent required of AMD Member under this Agreement) and (b) perform or comply with the AMD Guaranteed Obligations for which performance or compliance is due or cause such AMD Guaranteed Obligations to be performed or complied with (such performance or compliance as required of AMD Member under this Agreement).

11.3 Guarantee Absolute and Unconditional

AMD waives any and all notice of the creation, renewal, extension, amendment, modification or accrual of any of the AMD Guaranteed Obligations and notice of or proof of reliance by the Company upon this AMD Guaranty or acceptance of this AMD Guaranty; the AMD Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the AMD Guaranty; and all dealings between AMD Member and AMD, on the one hand, and the Company or Fujitsu and Fujitsu Member, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the AMD Guaranty. AMD agrees that (i) any notice provided under this Agreement to AMD Member (including any demand for payment or notice of default or non payment) shall be deemed to constitute notice to AMD for purposes hereof and (ii) any knowledge of AMD Member shall be deemed knowledge of AMD for purposes hereof. Nothing in this Article 11 shall be deemed to constitute a waiver of, or prevent AMD from asserting, any valid defense that may be asserted by AMD Member. AMD waives to the fullest extent permitted by Applicable Law any defense whatsoever to the performance of the AMD Guaranteed Obligations that would not constitute a valid defense by AMD Member (including, without limitation, any defense that may be derived from or afforded by Applicable Law that limits the liability of or exonerate guarantors or sureties). AMD understands and agrees that this AMD Guaranty shall be construed as a continuing, absolute and unconditional guaranty of payment and performance without regard to (a) the validity or enforceability of this Agreement or this Article 11, or (b) any other circumstance whatsoever (with or without notice to or knowledge of AMD Member or AMD) which constitutes, or might be construed to constitute, an equitable or legal discharge of AMD Member for the AMD Guaranteed Obligations, or of AMD under the AMD Guaranty in bankruptcy or any similar proceedings. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against AMD, the Company, Fujitsu or Fujitsu Member may, but shall be under no obligation to (and AMD irrevocably and unconditionally hereby waives to the fullest extent permitted by Applicable Law any right AMD may have to require the Company or any other Person to, and any defense that may arise from the Company's or any other Person's failure to) make a similar demand on or otherwise pursue such rights and remedies as it may have against AMD Member or any other Person or against any collateral security or guaranty for the AMD Guaranteed Obligations or any right of offset with respect thereto, and any failure by the Company to make any such demand, to pursue such other rights or remedies or to collect any payments from AMD Member or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release of AMD Member or any other Person or any such collateral security, guaranty or right of offset, shall not relieve AMD of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Company against AMD. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

11.4 Reinstatement

This AMD Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the AMD Guaranteed Obligations is rescinded or must otherwise be restored or returned by the Company upon any insolvency, bankruptcy, dissolution, liquidation or reorganization involving AMD Member or AMD, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, AMD Member or AMD or any substantial part of its property, or otherwise, all as though such payments had not been made.

11.5 Expenses

AMD shall pay reasonable out-of-pocket attorneys' fees, reasonable out-of-pocket costs and other expenses of the Company, Fujitsu Member or Fujitsu expended or incurred in enforcing the AMD Guaranty against AMD with respect to any claim against AMD Member in which the Company, Fujitsu Member or Fujitsu is the prevailing party, whether or not legal action is instituted, including, without limitation, all fees, costs and expenses incurred in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving AMD Member or AMD which in any way affect the exercises by the Company, Fujitsu Member or Fujitsu of any of its rights and/or remedies hereunder. Except as provided in the preceding sentence, any expenses incurred by the parties hereto in any arbitration proceeding initiated pursuant to Section 13.14 shall be paid in accordance with the dispute resolution procedures set forth in **Schedule A**.

11.6 Expiration of Guaranty

Notwithstanding anything in this Article 11 to the contrary, this Article 11 shall apply until the earlier to occur of (a) the date that all AMD Guaranteed Obligations and the obligations of AMD under this Article 11 shall have been satisfied by performance in full and of the AMD Guaranteed Obligations and (b) the date that AMD Member consummates a sale of its entire Membership Interest in the Company to an unaffiliated third party pursuant to Article 9 and such third party becomes a Substitute Member; provided that this Article 11 shall remain in effect with respect to any claims arising under this Article 11 on or prior to the date of such sale.

11.7 Limits on Guaranty

Notwithstanding anything in this Article 11 to the contrary, (a) Fujitsu Member may only make a claim or otherwise enforce rights against AMD under the AMD Guaranty if (i) Fujitsu Member has a claim based on a direct contractual obligation or legal duty between the Members arising out of or relating to this Agreement or (ii) Fujitsu Member believes in good faith that it has otherwise suffered damages as a result of a breach hereunder by AMD Member that exceed independently, or in the aggregate with all previous uncured breaches by AMD Member, one hundred million dollars (U.S.\$100,000,000) and (b) Fujitsu may only make a claim or otherwise enforce rights against AMD under the AMD Guaranty if Fujitsu believes in good faith that it has suffered damages as a result of a breach hereunder by AMD Member that exceed independently, or in the aggregate with all previous uncured breaches by AMD Member, one hundred million dollars (U.S.\$100,000,000).

11.8 Limitation on Claims

If, based upon a substantially identical underlying factual basis, (A) an arbitrator, court, tribunal or other judicial authority determines in an enforceable award, judgment or decision that AMD or an Affiliate of AMD shall make payments to, or on behalf of, the Company, and to or on behalf of Fujitsu or an Affiliate of Fujitsu, in satisfaction of a breach of contract claim, indemnification claim, enforcement action or other legal or equitable claims of the Company and of Fujitsu or an Affiliate of Fujitsu (other than in each case for indemnification of Fujitsu or an Affiliate of Fujitsu against a Third Party Claim (as defined in the Contribution Agreement)), related to any Transaction Document (as defined in the Contribution Agreement) or the transactions contemplated thereunder, and (B) AMD or its Affiliate makes the payments in satisfaction of the claim of the Company, the amounts payable to, or on behalf of, Fujitsu or its Affiliate by AMD or its Affiliate shall be reduced by an amount equal to the product of (X) Fujitsu's Membership Interest at the time of the claim of the Company multiplied by (Y) the aggregate amount paid by AMD to, or on behalf of, the Company, in satisfaction of the claim of the Company.

ARTICLE 12. FUJITSU GUARANTY

12.1 Guaranty

Subject to the limitations expressly set forth in this Article 12, Fujitsu hereby, absolutely, unconditionally and irrevocably, guarantees (this "**Fujitsu Guaranty**") by way of an independent obligation to the Company and AMD and AMD Member (a) the due, prompt and faithful performance by Fujitsu Member of all undertakings, obligations, required acts and performances of Fujitsu Member under or arising out of this Agreement, and (b) the due and punctual payment of all amounts due and payable by Fujitsu Member under or arising out of this Agreement after the date hereof, when and as the same shall arise and become due and payable in accordance with the terms of and subject to the conditions contained in this Agreement (collectively, the "**Fujitsu Guaranteed Obligations**").

12.2 Fujitsu Guaranteed Obligations

This is a guaranty of payment and performance and not of collection only. If for any reason whatsoever Fujitsu Member shall fail or be unable to perform or comply with any of its Fujitsu Guaranteed Obligations, Fujitsu shall promptly upon receipt of notice thereof from the Company or AMD Member, as applicable, (a) pay or cause to be paid in lawful money of the United States the unpaid Fujitsu Guaranteed Obligations then due and payable (at the place specified and in the amounts and to the extent required of Fujitsu Member under this Agreement) and (b) perform or comply with the Fujitsu Guaranteed Obligations for which performance or compliance is due or cause such Fujitsu Guaranteed Obligations to be performed or complied with (such performance or compliance as required of Fujitsu Member under this Agreement).

12.3 Guarantee Absolute and Unconditional

Fujitsu waives any and all notice of the creation, renewal, extension, amendment, modification or accrual of any of the Fujitsu Guaranteed Obligations and notice of or proof of reliance by the Company upon this Fujitsu Guaranty or acceptance of this Fujitsu Guaranty; the Fujitsu Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the Fujitsu Guaranty; and all dealings between Fujitsu Member and Fujitsu, on the one hand, and the Company or AMD and AMD Member, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the Fujitsu Guaranty. Fujitsu agrees that (i) any notice provided under this Agreement to Fujitsu Member (including any demand for payment or notice of default or non payment) shall be deemed to constitute notice to Fujitsu for purposes hereof and (ii) any knowledge of Fujitsu Member shall be deemed knowledge of Fujitsu for purposes hereof. Nothing in this Article 12 shall be deemed to constitute a waiver of, or prevent Fujitsu from asserting, any valid defense that may be asserted by Fujitsu Member. Fujitsu waives to the fullest extent permitted by Applicable Law any defense whatsoever to the performance of the Fujitsu Guaranteed Obligations that would not constitute a valid defense by Fujitsu Member (including, without limitation, any defense that may be derived from or afforded by Applicable Law that limits the liability of or exonerates guarantors or sureties). Fujitsu understands and agrees that this Fujitsu Guaranty shall be construed as a continuing, absolute and unconditional guaranty of payment and performance without regard to (a) the validity or enforceability of this Agreement or this Article 12, or (b) any other circumstance whatsoever (with or without notice to or knowledge of Fujitsu Member or Fujitsu) which constitutes, or might be construed to constitute, an equitable or legal discharge of Fujitsu Member for the Fujitsu Guaranteed Obligations, or of Fujitsu under the Fujitsu Guaranty in bankruptcy or any similar proceedings. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against Fujitsu, the Company, AMD or AMD Member may, but shall be under no obligation to (and Fujitsu irrevocably and unconditionally waives to the fullest extent permitted by Applicable Law any right Fujitsu may have to require the Company or any other Person to, and any defense that may arise from the Company's or any other Person's failure to), make a similar demand on or otherwise pursue such rights and remedies as it may have against Fujitsu Member or any other Person or against any collateral security or guaranty for the Fujitsu Guaranteed Obligations or any right of offset with respect thereto, and any failure by the Company to make any such demand, to pursue such other rights or remedies or to collect any payments from Fujitsu Member or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release of Fujitsu Member or any other Person or any such collateral security, guaranty or right of offset, shall not relieve Fujitsu of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Company against Fujitsu. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

12.4 Reinstatement

This Fujitsu Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Fujitsu Guaranteed Obligations

is rescinded or must otherwise be restored or returned by the Company upon any insolvency, bankruptcy, dissolution, liquidation or reorganization involving Fujitsu Member or Fujitsu, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Fujitsu Member or Fujitsu or any substantial part of its property, or otherwise, all as though such payments had not been made.

12.5 Expenses

Fujitsu shall pay reasonable out-of-pocket attorneys' fees, reasonable out-of-pocket costs and other expenses of the Company, AMD Member or AMD expended or incurred in enforcing the Fujitsu Guaranty against Fujitsu with respect to any claim against Fujitsu Member in which the Company, AMD Member or AMD is the prevailing party, whether or not legal action is instituted, including, without limitation, all fees, costs and expenses incurred in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving Fujitsu Member or Fujitsu which in any way affect the exercises by the Company, AMD Member or AMD of any of its rights and/or remedies hereunder. Except as provided in the preceding sentence, any expenses incurred by the parties hereto in any arbitration proceeding initiated pursuant to Section 13.14 shall be paid in accordance with the dispute resolution procedures set forth in **Schedule A**.

12.6 Expiration of Guaranty

Notwithstanding anything in this Article 12 to the contrary, this Article 12 shall apply until the earlier to occur of (a) the date that all Fujitsu Guaranteed Obligations and the obligations of Fujitsu under this Article 12 shall have been satisfied by performance in full and of the Fujitsu Guaranteed Obligations and (b) the date that Fujitsu Member consummates a sale of its entire Membership Interest in the Company to an unaffiliated third party pursuant to Article 9 and such third party becomes a Substitute Member; provided that this Article 12 shall remain in effect with respect to any claims arising under this Article 12 on or prior to the date of such sale.

12.7 Limits on Guaranty

Notwithstanding anything in this Article 12 to the contrary, (a) AMD Member may only make a claim or otherwise enforce rights against Fujitsu under the Fujitsu Guaranty if (i) AMD Member has a claim based on a direct contractual obligation or legal duty between the Members arising out of or relating to this Agreement or (ii) AMD Member believes in good faith that it has otherwise suffered damages as a result of a breach hereunder by Fujitsu Member that exceed independently, or in the aggregate with all previous uncured breaches by Fujitsu Member, one hundred million dollars (U.S.\$100,000,000) and (b) AMD may only make a claim or otherwise enforce rights against Fujitsu under the Fujitsu Guaranty if AMD believes in good faith that it has suffered damages as a result of a breach hereunder by Fujitsu Member that exceed independently, or in the aggregate with all previous uncured breaches by Fujitsu Member, one hundred million dollars (U.S.\$100,000,000).

12.8 Limitation on Claims

If, based upon a substantially identical underlying factual basis, (A) an arbitrator, court, tribunal or other judicial authority determines in an enforceable award, judgment or decision that Fujitsu or an Affiliate of Fujitsu shall make payments to, or on behalf of, the Company, and to or on behalf of AMD or an Affiliate of AMD, in satisfaction of a breach of contract claim, indemnification claim, enforcement action or other legal or equitable claims of the Company and of AMD or an Affiliate of AMD (other than in each case, for indemnification of AMD or an Affiliate of AMD against a Third Party Claim (as defined in the Contribution Agreement)), related to any Transaction Document (as defined in the Contribution Agreement) or the transactions contemplated thereunder, and (B) Fujitsu or its Affiliate makes the payments in satisfaction of the claim of the Company, the amounts payable to, or on behalf of, AMD or its Affiliate by Fujitsu or its Affiliate shall be reduced by an amount equal to the product of (X) AMD's Membership Interest at the time of the claim of the Company multiplied by (Y) the aggregate amount paid by Fujitsu to, or on behalf of, the Company, in satisfaction of the claim of the Company.

ARTICLE 13. MISCELLANEOUS

13.1 Amendments

13.1.1 Joinder. Each Substitute Member shall become a signatory hereto by signing a Joinder Agreement substantially in the form of **Exhibit B**, and this Agreement will be deemed to have been amended to give effect to such Joinder Agreement. By so signing, each Substitute Member, as the case may be, shall be deemed to have adopted and to have agreed to be bound by all of the provisions of this Agreement.

13.1.2 Requirement; Board Authority. Any provision of this Agreement may be amended, if, and only if, such amendment is in writing and is duly executed by all Members; *provided, however*, that amendments may be made to this Agreement from time to time by the Board of Managers, without the consent of either Member: (a) to delete or add any provision of this Agreement required to be so deleted or added by any Governmental Authority, which addition or deletion is deemed by such Governmental Authority to be for the benefit or protection of all of the Members; or (b) to take such actions as may be reasonably necessary (if any) to insure that the Company will be treated as a partnership for federal income tax purposes. Upon the making of any amendment to this Agreement in accordance with the previous sentence, the Board of Managers shall prepare and file such documents and certificates as may be required under the Act and under any other Applicable Law.

13.2 No Waiver

Any provision of this Agreement may be waived if, and only if, such waiver is in writing and is duly executed by the party against whom the waiver is to be enforced. No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial waiver or exercise thereof preclude the enforcement of any other right, power or privilege.

13.3 Entire Agreement

This Agreement, together with the Contribution Agreement and the other documents, exhibits and schedules referred to herein and therein, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and supersede any and all prior oral and written, and all contemporaneous oral, agreements or understandings pertaining thereto. There are no agreements, understandings, restrictions, warranties or representations relating to such subject matter among the parties other than those set forth herein, in the Contribution Agreement and in the other documents, exhibits and schedules referred to herein and therein.

13.4 Further Assurances

Each of the parties hereto does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary or advisable to effectively carry out the purposes of this Agreement.

13.5 Notices

Unless otherwise provided herein, all notices, requests, instructions or consents required or permitted under this Agreement shall be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) ten (10) Business Days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) Business Days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All communications will be sent to the addresses listed on **Exhibit A** (or to such other address or facsimile number as may be designated by a party giving written notice to the other parties pursuant to this Section 13.5).

13.6 Tax Matters

13.6.1 Tax Matters Partner.

(a) The Company shall file an election pursuant to Code Section 6231(a)(1)(B)(ii) to have Code Section 6231(a)(1)(B)(i) not apply. For so long as AMD Member and/or any of its Affiliates has an aggregate Percentage Interest greater than fifty percent (50%), AMD Member shall serve as the Company's "Tax Matters Partner" (as defined in Code Section 6231(a)(7)) and shall perform any similar or corresponding role under applicable state law. The Tax Matters Partner shall perform the duties imposed on a Tax Matters Partner under the Code and shall be entitled to expend Company funds for (or to be reimbursed for) reasonable third-party costs relating thereto. All legal and accounting fees relating to any audits of the Company shall be borne by the Company; provided, that the Members shall bear the costs of any audits of their separate tax returns. In the event the United States Internal Revenue

Service or any other applicable Governmental Authority notifies the Tax Matters Partner of any proposed Proceeding relating to the Company's information or tax returns or to the amount of the liability of the Company for any Tax, the Tax Matters Partner shall promptly notify the other Members of such matter, shall provide relevant factual information (to the extent known) describing any asserted liability for Tax in reasonable detail and shall provide copies of any notice or other documents received from the Internal Revenue Service or other applicable Governmental Authority with respect to such matter. The Tax Matters Partner shall at all times keep the other Members informed as to the status of all such Proceedings and shall permit each other Member to Participate fully in that portion of any Proceeding relating to Taxes for which it may have liability under Article X of the Contribution Agreement. Any such right to Participate shall not limit the rights any such other Member may otherwise have under Applicable Law. In the event that a proposed adjustment relating to any "partnership item" (as defined in Code Section 6231(a)(3)) or any similar or corresponding item under applicable state law is an item for which any Member is or potentially may be an Indemnifying Party pursuant to Article X of the Contribution Agreement, the Company shall not enter into any settlement agreement or otherwise agree to any settlement with respect to such partnership item without the consent of the Indemnifying Party.

(b) The Member designated as Tax Matters Partner is hereby authorized to make all elections available to the Company for federal, state, local, and foreign tax purposes, except that in no event shall the Company file an election to be treated as a corporation or as an association taxable as a corporation for United States federal income tax purposes or for purposes of income or corporate franchise tax purposes under the law of any State of the United States. In respect of any tax elections that the Company may be eligible or required to make under the laws of Japan, the Tax Matters Partner shall consult with appropriate officers or other personnel employed by FASL (Japan).

(c) The Tax Matters Partner shall prepare or cause to be prepared all appropriate income and information tax returns for the Company; provided, that if the Company is required to file tax returns with any national or sub-national Governmental Authority in Japan, such returns shall be prepared by a qualified Japanese audit corporation under the supervision of the Board of Managers (which supervisory responsibility may be delegated to the Tax Matters Partner who shall request assistance from FASL (Japan) to the extent that the Tax Matters Partner reasonably determines that such assistance would be in the best interest of the Company. All such returns shall be subject to review by the other Member(s) before filing and shall be delivered to the other Member(s) for review not fewer than ten (10) Business Days in advance of the due date thereof (taking into account any extensions actually obtained); provided, however, that the Tax Matters Partner shall use its best efforts to provide Fujitsu Member with 30 days advance notice if the Tax Matters Partner intends that the Company will take any position on Form 1065 as to which a disclosure will be filed on IRS Form 8275 (or any variation thereof) or as to which the Tax Matters Partner believes that "substantial authority" (within the meaning of Code Section 6662) is or may be lacking, and thereafter, if so requested by Fujitsu Member, shall consult with Fujitsu Member concerning such position. All third-party costs and expenses reasonably incurred by the Tax Matters Partner in performing its duties described in this Section 13.6 or otherwise in accordance with the terms of this Agreement (including legal and accounting fees) shall be borne by the Company. Each Member shall provide to the Tax Matters

Partner such information as the Tax Matters Partner deems necessary or appropriate in connection with its activities as Tax Matters Partner; provided, however, that in no event will Fujitsu Member be required to disclose to the Tax Matters Partner or the Company copies of any Tax returns filed by Fujitsu Member or any Affiliate of Fujitsu Member. The Tax Matters Partner shall cooperate with the Members by providing to each Member such information as the Member may reasonably request concerning the Company and its transactions in connection with the determination of such Member's liability for any Tax or any Proceeding relating thereto.

(d) Notwithstanding any other provisions of this Agreement, Fujitsu Member shall have the right, by written notice to AMD Member, to require that the Company's United States federal, state and local information tax returns be prepared by a certified public accounting firm in the event that any of the following occur: (i) the Company fails to file any required IRS Form 1065 (or successor Form) or corresponding returns or reports for the States of Texas or California on a timely basis (taking into account any extensions actually obtained); (ii) the Company fails to provide to Fujitsu Member the information described in Section 7.10(b) within the applicable time periods set forth in such Section; (iii) penalties under Code Sections 6662 or 6663 are imposed on Fujitsu Member due to the negligence or fraud (as such terms are defined in Sections 6662 and 6663 and the Regulations thereunder) of AMD Member or an Affiliate of AMD Member in preparing tax filings in respect of the Company; or (iv) the Company fails to receive, on a timely basis (not less frequently than annually in advance of filing its Form 1065), an opinion of counsel that after review of materials prepared by the Company to comply with the requirements of Code Section 6222(e) and Section 1.6662-6(d) of the Regulations, given the applicable data and pricing methods, the Company reasonably concluded that the method applied for each of the various intercompany transactions described in such materials provides the most reliable measure of an arm's length result under the best methods rule of Section 1.482-1(c) of the Regulations.

(e) In the event that the Company's tax returns are prepared by a certified public accounting firm, all determinations of the amounts of the Members' Tax Liability Distributions pursuant to Section 5.1.1 shall thereafter be made on a basis consistent with the treatment of particular items or types of transactions taken on the Company's returns as so prepared (to the extent positions have been taken with respect to particular items or types of transactions) unless (i) a change in applicable tax law renders such treatment no longer proper, (ii) the Company receives advice from such certified public accounting firm or outside tax counsel (not including persons employed by the Tax Matters Partner) that another treatment should be followed, or (iii) the Members mutually agree otherwise. If any of the conditions described in clauses (i), (ii) or (iii) of the preceding sentence applies, Tax Liability Distributions shall be calculated consistently with the expected tax treatment of such items based on such change in law, professional advice or mutual agreement.

(f) The provisions of this Section 13.6 shall survive the termination or dissolution of the Company and shall remain binding on the Members for such period of time as is necessary to resolve any and all matters regarding the Tax treatment of the Company and Tax items attributable to the Company.

13.6.2 Standards. Except as set forth in Section 13.6.3, the Tax Matters Partner and its Affiliates shall not be liable, responsible, or accountable, in damages or otherwise, to the Company or to any other Member(s) for doing any act or failing to do any act, with respect to the Tax Matters Partner's duties set forth in this Section 13.6 or otherwise performed, the effect of which may cause or result in loss or damage to the Company or any Member(s), unless the Tax Matters Partner or one of its Affiliates engages in gross negligence or willful misconduct.

13.6.3 Indemnity. Notwithstanding any other provision of this Agreement, in the event that a positive Tax Liability Distribution Adjustment pursuant to Section 5.1.1 herein is made in respect of Fujitsu Member in respect of any Fiscal Year of the Company, the Company shall indemnify and hold harmless Fujitsu Member for any resulting penalties and interest. Any payment made to Fujitsu Member pursuant to the preceding sentence of this Section 13.6.3 shall be treated as a guaranteed payment within the meaning of Code Section 707(c). The amount of any payments made pursuant to this Section 13.6.3 shall be determined so as to fully indemnify Fujitsu Member for such penalties and interest after taking into account the amount of income Tax required to be paid by Fujitsu Member with respect to such amount (for this purpose, the payment shall be treated as being subject to income Tax at the Tax Distribution Rate applicable to the year in which such amount is includible in taxable income by Fujitsu Member) and the Tax benefit of the corresponding deduction allocated to Fujitsu Member by the Company (which deduction shall be treated as providing a Tax benefit at the Tax Distribution Rate applicable to Fujitsu Member for its taxable year with or within which ends the taxable year of the Company for which such amount is properly deductible by the Company).

13.7 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, United States of America, as applied to agreements among Delaware residents entered into and wholly to be performed within the State of Delaware (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction).

13.8 Construction; Interpretation

13.8.1 Certain Terms. The words "hereof," "herein," "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term "including" is not limited and means "including without limitation."

13.8.2 Section References; Titles and Subtitles. Unless otherwise noted, all references to Sections, Schedules and Exhibits herein are to Sections, Schedules and Exhibits of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

13.8.3 Reference to Persons, Agreements, Statutes. Unless otherwise expressly provided herein, (i) references to a Person include its successors and permitted assigns, (ii) references to agreements (including this Agreement) and other contractual instruments shall

be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (iii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation.

13.8.4 Presumptions. No party, nor its counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all provisions of this Agreement shall be construed in accordance with their fair meaning, and not strictly for or against any party.

13.9 Rights and Remedies Cumulative

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

13.10 No Assignment; Binding Effect

Except as otherwise expressly provided herein, no party may assign, delegate or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each other party. Any attempted assignment in violation of the foregoing shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the Members, their heirs, executors, administrators, successors and all other Persons hereafter holding, having or receiving an interest in the Company, whether as Assignees, Substitute Members or otherwise.

13.11 Language

This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

13.12 Severability

If any provision in this Agreement will be found or be held to be invalid or unenforceable, then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any party. In such event, the parties will use their respective best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the parties' intent in entering into this Agreement.

13.13 Counterparts

This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a party shall constitute a valid and binding execution and delivery of this Agreement by such party.

13.14 Dispute Resolution

The parties hereby agree that claims, disputes or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement (or any other agreement contemplated by or related to this Agreement), shall be resolved in accordance with the dispute resolution procedures set forth in Schedule A.

13.15 Third-Party Beneficiaries

None of the provisions of this Agreement shall be for the benefit of or be enforceable by any creditor of the Company or by any third-party creditor of any Member. This Agreement is not intended to confer any rights or remedies hereunder upon, and shall not be enforceable by, any Person other than the parties hereto (including, for the avoidance of doubt, AMD and Fujitsu as parties hereto with respect to all applicable provisions hereof), their respective successors and permitted assigns and, solely with respect to the provision of Section 7.11, each Indemnitee and each other indemnified Person addressed therein.

13.16 Specific Performance

The parties agree that irreparable damage will result if this Agreement is not performed in accordance with its terms, and the parties agree that any damages available at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the parties hereunder shall be enforceable in a court of equity, or other tribunal with jurisdiction, by a decree of specific performance, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies and all other remedies provided for in this Agreement shall, however, be cumulative and not exclusive and shall be in addition to any other remedies that a party may have under this Agreement, at law or in equity.

13.17 Consequential Damages

No party shall be liable to any other party under any legal theory for indirect, special, incidental, consequential or punitive damages, or any damages for loss of profits, revenue or business, even if such party has been advised of the possibility of such damages (it being understood that (i) diminution in value of Membership Interest shall not be considered to fall within any such category of damages and (ii) a claim seeking to recover diminution in value shall not be limited by operation of this Section 13.17).

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

MEMBERS

AMD INVESTMENTS, INC.

By: _____ /s/ Thomas M. McCoy

Name: Thomas M. McCoy
Title: Vice President and Secretary

FUJITSU MICROELECTRONICS HOLDING, INC.

By: _____ /s/ Kazuo Iida

Name: Kazuo Iida
Title: President

NON-MEMBERS

ADVANCED MICRO DEVICES, INC.

By: _____ /s/ Thomas M. McCoy

Name: Thomas M. McCoy
Title: Senior Vice President, General Counsel
Address: One AMD Place
Sunnyvale, California 94086
Facsimile: (408) 774-7399

FUJITSU LIMITED

By: _____ /s/ Hiroaki Kurokawa

Name: Hiroaki Kurokawa
Title: President and Representative Director

Address: _____

Facsimile: _____

Schedule S-1

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

AMD-FASL PATENT CROSS-LICENSE AGREEMENT

THIS AMD-FASL PATENT CROSS-LICENSE AGREEMENT (this “**Agreement**”) is made and entered into as of June 30, 2003 (the “**Effective Date**”), by and between Advanced Micro Devices, Inc., a Delaware corporation (“**Parent**”) and FASL LLC, a Delaware limited liability company (“**FASL**”). Parent and FASL are hereinafter also referred to, collectively, as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, FASL was formed for the purpose of conducting the Business;

WHEREAS, Parent, Fujitsu Limited, a Japanese corporation (“**Fujitsu**”), AMD Investments, Inc. and Fujitsu Microelectronics Holding, Inc. have entered into that certain Amended and Restated Limited Liability Company Operating Agreement of FASL LLC as of June 30, 2003 (the “**Operating Agreement**”); and

WHEREAS, Parent and FASL each own or control, and may in the future obtain ownership or control of, various patent rights to which the other Party wishes to acquire a license.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and other terms and conditions contained herein, Parent and FASL agree as follows:

AGREEMENT

1. DEFINITIONS; INTERPRETATION

1.1 **Capitalized but Undefined Terms**. Capitalized terms used in this Agreement but not defined herein shall have the meaning ascribed to such terms in the Operating Agreement.

1.2 **Terms Defined in this Agreement**. The following terms when used in this Agreement shall have the following definitions:

1.2.1 “**Acquired Party**” means a Party or the Semiconductor Group of a Party that has undergone a Change of Control.

1.2.2 “**Acquired Party Covered Product**” has the meaning set forth in Section 9.3.3(a).

1.2.3 “**Acquirer**” means a Third Party that, through a Change of Control of an Acquired Party, either (a) acquires, through any transaction or series of related transactions, ownership of securities representing more than fifty percent (50%) of the power to elect Acquired Party’s board of directors or other managing authority, or in the case Acquired Party is a non-corporate Person, equivalent interests, (b) consolidates with or merges with or into Acquired Party, or has Acquired Party merged into it, or (c) purchases or otherwise receives transfer of all or a substantially all of the assets or business of Acquired Party.

1.2.4 “**Acquirer Competitive Product**” has the meaning set forth in Section 9.3.3(b).

1.2.5 “**Acquirer Licensed Patents**,” with respect to an Acquirer to which this Agreement is assigned pursuant to Section 10.6, means all Patents that, as of the effective date of such assignment or thereafter during the Term, are wholly owned by Acquirer, or as to which, and only to the extent and subject to the conditions under which, Acquirer has the right, as of the effective date of such assignment or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless the non-assigning Party undertakes to pay directly or to reimburse Acquirer for any such royalties or other consideration, in which case such Patents shall be included within the Acquirer Licensed Patents), except for payments to a Subsidiary of Acquirer sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of Acquirer or any Subsidiary of Acquirer sublicensed hereunder.

1.2.6 “**Assigned Patent Rights**” has the meaning set forth in the Intellectual Property Contribution and Ancillary Matters Agreement.

1.2.7 “**Auxiliary Part**” means input/output means, supporting means, terminal members, conductors or equivalent interconnecting members, housing means, any environmental controlling means included within such housing means or unitary with such housing means and active and/or passive elements unitarily or separately combined with a Semiconductor Product and any other parts, primarily useable in or for manufacturing, assembling or packaging Semiconductor Products.

1.2.8 “**Basic Royalty Payment**” has the meaning set forth in Section 6.1.

1.2.9 “**Change of Control**” shall be deemed to have occurred, with respect to a Person (which, for purposes of this Section 1.2.9 also includes the Semiconductor Group of either Party), when: (a) any “person” or “group” (as such terms are used in Sections 13(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of shares representing more than fifty percent (50%) of the combined voting power of the then-outstanding securities entitled to vote generally in elections of directors of such Person, or in the case such Person is a non-corporate Person, equivalent interests; (b) such Person consolidates with or merges with or into any other Person, or any other Person merges into such Person, unless immediately after such consolidation or merger, the Persons that, prior to such consolidation or merger, owned the then-outstanding securities of such Person entitled to vote generally in elections of directors, or in the case such Person is a non-corporate Person, equivalent interests, own in the aggregate at least fifty percent (50%) of such securities or equivalent interests of the surviving entity; or (c) such Person sells or otherwise transfers all or substantially all of the assets or business of such Person.

1.2.10 “**Change of Control Date**” means, with respect to the Change of Control of a Person, the effective date of such Change of Control.

1.2.11 “**Circuit Patents**” means those Licensed Patents that claim a plurality of active and/or passive elements for generating, receiving, transmitting, storing, transforming or acting in response to electrical signal(s) to achieve a particular function, *provided* that Circuit Patents shall not include Process Patents.

1.2.12 “**Coatue Licensed Patents**” means the patent and patent applications set forth on Schedule 1.2.12 and all Patents issuing on such patent applications.

1.2.13 “**Coatue Product**” means any Licensed Product that incorporates Polymer Technology and that is manufactured by FASL or for FASL by a Third Party that is not licensed under the Coatue Licensed Patents.

1.2.14 “**Coatue Royalty Payment**” has the meaning set forth in Section 6.2.

1.2.15 “**Control**” (including “**Controlled**,” “**Controlling**” and other forms thereof), with respect to a Person, means beneficial ownership, directly or indirectly, of securities representing more than fifty percent (50%) of the power to elect such Person’s board of directors or other managing authority, or in the case of a non-corporate Person, equivalent interests.

1.2.16 “**Exchange Rate**” means, with respect to any payment by FASL to Parent, the exchange rate for bank cable transfers from the applicable currency to United States dollars as quoted by Citibank, N.A.

1.2.17 “**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

1.2.18 “**Existing Product**” of a Person, as of a certain date, means a Licensed Product developed by or for such Person and being made (or have made) and offered for sale by such Person on or prior to such date.

1.2.19 “**FASL**” has the meaning set forth in the first paragraph of this Agreement.

1.2.20 “**FASL Content**” has the meaning set forth in the AMD Distribution Agreement.

1.2.21 “**FASL Licensed Patents**” means all Patents that, as of the Effective Date or thereafter during the Term, are wholly owned by FASL or any of its Subsidiaries that are subject to control by the FASL Semiconductor Group, or as to which, and only to the extent and subject to the conditions under which, FASL or any of its Subsidiaries that are subject to control by the FASL Semiconductor Group has the right, as of the Effective Date or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless Parent undertakes to pay directly or to reimburse FASL and/or its Subsidiaries, as applicable, for any such

royalties or other consideration, in which case such Patents shall be included within the FASL Licensed Patents), except for payments to FASL or any of its Subsidiaries that are subject to control by the FASL Semiconductor Group or payments to Persons for inventions made by such Persons while employees or contractors of FASL or any of its Subsidiaries that are subject to control by the FASL Semiconductor Group. Notwithstanding any of the foregoing, FASL Licensed Patents do not include any Assigned Patent Rights.

1.2.22 “**Fujitsu**” has the meaning set forth in the Recitals.

1.2.23 “**Intellectual Property Contribution and Ancillary Matters Agreement**” means that certain Intellectual Property Contribution and Ancillary Matters Agreement entered into as of June 30, 2003 by and among Parent, FASL, AMD Investments, Inc. and Fujitsu.

1.2.24 “**Licensed Patents**” means, collectively, the FASL Licensed Patents, the Parent Licensed Patents, and the Subsidiary Licensed Patents of each Subsidiary of Parent that, pursuant to Section 5.1, is granted sublicenses of the rights, licenses and immunities granted to Parent under Sections 2, 3 and 4.

1.2.25 “**Licensed Product**” means any of the items described in the following clauses (a) through (d) and/or parts thereof:

- (a) Semiconductive Material;
- (b) Auxiliary Part;
- (c) Semiconductor Product; or
- (d) Manufacturing Apparatus.

1.2.26 “**Manufacturing Apparatus**” means any instrumentality or aggregate of instrumentalities primarily designated for use in the making of any of the items set forth in clauses (a) through (c) of Section 1.2.25 and/or parts thereof.

1.2.27 “**Net Sales**” with respect to a product, means the gross amounts invoiced by FASL and its Subsidiaries for the sale or other distribution of the product within any country, less (a) separately stated charges for sales and use taxes, excise taxes, customs duties and other similar taxes, and (b) any amounts that FASL and its Subsidiaries actually paid for the non-FASL Content, if any, of such product.

1.2.28 “**Non-Semiconductor Group**,” with respect to a Party, means any of such Party’s internal groups or other organizations that is not the Semiconductor Group of such Party.

1.2.29 “**Operating Agreement**” has the meaning set forth in the Recitals.

1.2.30 “**Parent**” has the meaning set forth in the first paragraph of this Agreement.

1.2.31 “**Parent Licensed Patents**” means all Patents that, as of the Effective Date or thereafter during the Term, are wholly owned by Parent, or as to which, and only to the extent and subject to the conditions under which, Parent has the right, as of the Effective Date or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless FASL undertakes to pay directly or to reimburse Parent for any such royalties or other consideration, in which case such Patents shall be included within the Parent Licensed Patents), except for payments to a Subsidiary of Parent sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of Parent or any Subsidiary of Parent sublicensed hereunder. Parent Licensed Patents includes Coatue Licensed Patents.

1.2.32 “**Party**” and “**Parties**” have the respective meanings set forth in the first paragraph of this Agreement.

1.2.33 “**Patents**” means all classes or types of patents (including design patents) and utility models of all countries of the world issued or issuing on patent or utility model applications entitled to an effective filing date that is on or before the end of the Term, and respective applications therefor, together with any divisions, continuations and continuations-in-part and reissues and results of re-examinations thereof.

1.2.34 “**Pending Product**” of a Person, as of a certain date, means a Licensed Product developed by or for such Person that such Person reasonably expects to tapeout within eighteen (18) months of such date (as specified in a then-current written product roadmap as of such date) and that such Person reasonably expects to make (or have made) and sell commencing reasonably promptly thereafter.

1.2.35 “**Polymer Technology**” shall have a meaning to be agreed upon by the Parties and Fujitsu. The Parties and Fujitsu will negotiate such meaning in good faith promptly after the Effective Date.

1.2.36 “**Process Patents**” means those Licensed Patents that claim (a) a process for designing and/or making Licensed Products, including equipment used therefor, (b) materials comprising or used in the manufacturing of Licensed Products, or (c) a structure for the arrangement or interrelationship of regions, layers, electrodes or contacts of Licensed Products.

1.2.37 “**Royalty Payment**” means any Basic Royalty Payment or Coatue Royalty Payment.

1.2.38 “**Semiconductive Element**” means an element consisting primarily of a body of Semiconductive Material having a plurality of electrodes associated therewith, whether or not said body consists of a single Semiconductive Material or of a multiplicity of such materials, whether or not said body has, therein and/or thereon, one or more junctions and whether or not said body includes one or more layers or other regions (constituting substantially less than the whole of said body) of a material or materials which are of a type other than Semiconductive Material, and if provided as a part thereof, said element includes passivating means thereof.

1.2.39 “**Semiconductive Material**” means any material whose conductivity is intermediate to that of metals and insulators at room temperature and whose conductivity increases with increasing temperature over some temperature range.

1.2.40 “**Semiconductor Group**,” with respect to a Party, means the internal group or other organization of such Party having as its primary activities the research and development and making of Semiconductor Products for, and selling of Semiconductor Products to, the semiconductor merchant market. The FASL Semiconductor Group currently consists of FASL in its entirety. The Parent Semiconductor Group currently consists of Parent in its entirety.

1.2.41 “**Semiconductor Product**” means:

- (a) a Semiconductive Element; or
- (b) a Semiconductive Element and one or more films of conductive, semiconductive or insulating materials formed on a surface or surfaces of such Semiconductive Element, said film or films comprising one or more conductors, active or passive electrical circuit elements or any combination thereof; or
- (c) a unitary assembly consisting of one or more of the elements described in clauses (a) and/or (b) of this Section 1.2.41 having a fixed permanent physical relationship established therebetween; or
- (d) a unitary assembly consisting primarily of (i) one or more of the elements described in clauses (a), (b) and/or (c) of this Section 1.2.41, and (ii) one or more film devices having a fixed permanent physical relationship established therebetween.

Semiconductor Product includes, if provided therewith as a part thereof, (A) Auxiliary Parts and (B) additional electrical circuits constituted thereby and integrally included therein, *provided* that such Auxiliary Parts and additional electrical circuits are incidental to the functionality of such Semiconductor Products.

1.2.42 “**Semi-Annual Period**” means each half of FASL’s fiscal year (*i.e.*, January 1 through June 30, and July 1 through December 31); *provided, however*, that the first Semi-Annual period shall commence on the Effective Date and shall end on December 31, 2003, and the last Semi-Annual Period shall end on the effective date of any termination of this Agreement.

1.2.43 “**Subsidiary**” of a Party means any other Person that is Controlled by such Party, but such other Person shall be deemed to be a Subsidiary only so long as such Control exists. Notwithstanding the foregoing, neither FASL nor any Subsidiaries of FASL shall be deemed a Subsidiary of Parent.

1.2.44 “**Subsidiary Licensed Patents**,” with respect to a Subsidiary of Parent that, pursuant to Section 5.1, is granted sublicenses of the rights, licenses and immunities granted to Parent under Sections 2, 3 and 4, means all Patents that, as of the date of sublicense or thereafter during the Term, are wholly owned by such Subsidiary, or as to which, and only to the extent and subject to the conditions under which, such Subsidiary has the right, as of the date of sublicense or thereafter during the Term, to grant licenses or sublicenses, without such grant resulting in the payment of royalties or other consideration to third parties (unless FASL undertakes to pay directly or to reimburse such Subsidiary for any such royalties or other consideration, in which case such Patents shall be included within the Subsidiary Licensed Patents), except for payments to Parent or any other Subsidiary of Parent sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of such Subsidiary or any other Subsidiary of Parent sublicensed hereunder.

1.2.45 “**Successor Product**” means a subsequent or follow-on version of an Acquired Party Covered Product or Acquirer Competitive Product that is based on substantially the same technology (including “process shrinks” of such products and other incremental improvements thereto) as such Acquired Party Covered Product or Acquirer Competitive Product without the benefit of fundamental advances in design, and that is intended to replace such Acquired Party Covered Product or Acquirer Competitive Product and to be used in the same type of application (e.g., personal computer, mobile phone, etc.).

1.2.46 “**Term**” means the period commencing on the Effective Date and ending on the effective date of the termination of this Agreement pursuant to Section 9.

1.2.47 “**Termination Agreement**” means that certain Termination Agreement entered into as of June 30, 2003 by and among Parent, Fujitsu, and FASL (Japan).

1.2.48 “**Third Party**” means any Person other than the Parties and other than any Person Controlling, Controlled by or under common Control with either Party.

1.2.49 “**Transaction Documents**” has the meaning set forth in the Contribution Agreement.

1.3 Interpretation.

1.3.1 Certain Terms. The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.” The words “make” and “have made” include the acts of developing, assembling, packaging and/or testing.

1.3.2 Section References; Titles and Subtitles. Unless otherwise noted, all references to Sections and Schedules herein are to Sections and Schedules of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

1.3.3 Reference to Persons, Agreements, Statutes. Unless otherwise expressly provided herein, (a) references to a Person include its successors and permitted assigns, (b) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (c) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation.

2. MUTUAL RELEASE

2.1 **Release by FASL**. FASL hereby releases, acquits and forever discharges Parent hereunder from any and all claims or liability for infringement or alleged infringement of any FASL Licensed Patent by performance of acts prior to the date on which such Patent becomes a FASL Licensed Patent that, if performed on or after such date, would be acts licensed, sublicensed or immunized hereunder.

2.2 **Release by Parent**. Parent hereby releases, acquits and forever discharges FASL hereunder from any and all claims or liability for infringement or alleged infringement of any Parent Licensed Patent by performance of acts prior to the date on which such Patent becomes a Parent Licensed Patent that, if performed on or after such date, would be acts licensed, sublicensed or immunized hereunder.

3. GRANTS OF LICENSE

3.1 **Grant by FASL**. Subject to the terms and conditions of this Agreement, FASL hereby grants to Parent a non-exclusive and non-transferable (except pursuant to Section 10.6) license under FASL Licensed Patents:

3.1.1 to make, have made, use, sell, offer to sell, lease, import or otherwise dispose of Licensed Products (other than Manufacturing Apparatuses) anywhere in the world; and

3.1.2 to make, have made and use Manufacturing Apparatuses anywhere in the world, and to sell, offer to sell, lease, import or otherwise dispose of such Manufacturing Apparatuses anywhere in the world.

3.2 **Grant by Parent**. Subject to the terms and conditions of this Agreement, Parent hereby grants to FASL a non-exclusive and non-transferable (except pursuant to Section 10.6) license under Parent Licensed Patents:

3.2.1 to make, have made, use, sell, offer to sell, lease, import or otherwise dispose of Licensed Products (other than Manufacturing Apparatuses) anywhere in the world; and

3.2.2 to make, have made and use Manufacturing Apparatuses anywhere in the world, and to sell, offer to sell, lease, import or otherwise dispose of such Manufacturing Apparatuses anywhere in the world.

3.3 Non-Semiconductor Groups.

3.3.1 Notwithstanding anything to the contrary in this Agreement, the rights, licenses and immunities granted by Parent hereunder to FASL (and the definition of Parent Licensed Patents included in such grant) shall exclude Licensed Patents of any Parent Non-Semiconductor Group. No Parent Non-Semiconductor Group may exercise the rights, licenses and immunities granted hereunder to Parent for Licensed Products, except with respect to Licensed Products that are made by or for the Parent Semiconductor Group or a Subsidiary sublicensed hereunder.

3.3.2 Notwithstanding anything to the contrary in this Agreement, the rights, licenses and immunities granted by FASL hereunder to Parent (and the definition of FASL Licensed Patents included in such grant) shall exclude Licensed Patents of any FASL Non-Semiconductor Group. No FASL Non-Semiconductor Group may exercise the rights, licenses and immunities granted hereunder to FASL for Licensed Products, except with respect to Licensed Products that are made by or for the FASL Semiconductor Group or a Subsidiary sublicensed hereunder.

4. IMMUNITY FOR CUSTOMERS AND USERS

4.1 **Grant of Immunity by FASL.** The licenses granted to Parent pursuant to Section 3 shall include immunity for (and FASL hereby covenants not to sue) the resellers, distributors, users and other customers, direct or indirect, of Parent for Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of by or for or on behalf of Parent as set forth herein (whether such products are used, imported, sold, offered for sale, leased or otherwise disposed of alone or in combination with other products or services, although such immunity will not extend to any such combinations or parts of such other products or services other than the Licensed Products). With respect to products made by Parent on a foundry basis where a customer engages Parent as a foundry to make products for resale in the semiconductor merchant market by such customer based on designs, logic and/or specifications of such customer, the immunities granted to such customer pursuant to this Section 4 shall extend only to any Parent materials, information or technology supplied to such customer or incorporated in such products, or the process or method used to make such products. For purposes of clarification, the foregoing shall not affect in any way the licenses and immunities granted to Parent and its resellers, distributors, users and other customers (to the extent such other customers are not engaging Parent as a foundry as described above), direct or indirect, by this Agreement, including Sections 3 and 5 and this Section 4. The sale or other disposition to resellers, distributors, users and other customers, direct or indirect, of products by Parent does not convey any license or immunity, by implication, estoppel, or otherwise, to such resellers, distributors, users and other customers, direct or indirect, under Patent claims covering combinations of such products with other devices or elements.

4.2 **Grant of Immunity by Parent.** The licenses granted to FASL pursuant to Section 3 shall include immunity for (and Parent hereby covenants not to sue) the resellers, distributors, users and other customers, direct or indirect, of FASL for Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of by or for or on behalf of FASL as set forth herein (whether such products are used, imported, sold, offered for sale,

leased or otherwise disposed of alone or in combination with other products or services, although such immunity will not extend to any such combinations or parts of such other products or services other than the Licensed Products). With respect to products made by FASL on a foundry basis where a customer engages FASL as a foundry to make products for resale in the semiconductor merchant market by such customer based on designs, logic and/or specifications of such customer, the immunities granted to such customer pursuant to this Section 4 shall extend only to any FASL materials, information or technology supplied to such customer or incorporated in such products, or the process or method used to make such products. For purposes of clarification, the foregoing shall not affect in any way the licenses and immunities granted to FASL and its resellers, distributors, users and other customers (to the extent such other customers are not engaging FASL as a foundry as described above), direct or indirect, by this Agreement, including Sections 3 and 5 and this Section 4. The sale or other disposition to resellers, distributors, users and other customers, direct or indirect, of products by FASL does not convey any license or immunity, by implication, estoppel, or otherwise, to such resellers, distributors, users and other customers, direct or indirect, under Patent claims covering combinations of such products with other devices or elements.

5. EXTENSION OF LICENSE

5.1 Right of Parent. Parent shall have the right to grant sublicenses of the rights, licenses and immunities granted to Parent under Sections 2, 3 and 4, to a Subsidiary of Parent that is subject to control by the Semiconductor Group, but subject to the condition that such Subsidiary grants a license to FASL under its Subsidiary Licensed Patents, if any. Any such grant-back license shall otherwise be of a scope equivalent to that of Section 3.2. For purposes of clarification, (a) except as set forth in Section 5.2, it is an option, and not an obligation, for a Subsidiary to grant back such a license, unless and until such Subsidiary elects to be granted a sublicense of such rights, licenses and immunities, and (b) even without obtaining such a sublicense, a Subsidiary of Parent (whether subject to control by the Semiconductor Group or a Non-Semiconductor Group) may exercise the rights, licenses and immunities granted hereunder to Parent solely for Licensed Products that are made by or for the Semiconductor Group or a Subsidiary of Parent sublicensed hereunder.

5.2 Semiconductor Group Subsidiaries. If requested by FASL, Parent shall cause a Subsidiary actually controlled by the Semiconductor Group of Parent to grant a license to FASL under Section 5.1, in which case such Subsidiary shall be deemed sublicensed pursuant to Section 5.1.

5.3 Right of FASL. FASL shall have the right to grant sublicenses of the rights, licenses and immunities granted to FASL under Sections 2, 3 and 4, to Subsidiaries of FASL that are subject to control by the FASL Semiconductor Group.

5.4 No Other Right. A Party shall not have the right to grant sublicenses of the Patents licensed hereunder except as provided in this Section 5 or in Section 7.1 of the Intellectual Property Contribution and Ancillary Matters Agreement.

6. ROYALTIES

6.1 **Basic Royalty Payments.** In consideration of the licenses set forth in Section 3.2 with respect to Parent Licensed Patents other than Coatue Licensed Patents, FASL shall pay to Parent the following royalty payments (each a “**Basic Royalty Payment**”):

- 6.1.1 During the four (4) year period commencing on the Effective Date, **** of Net Sales of Licensed Products;
- 6.1.2 During the four (4) year period commencing on the fourth anniversary of the Effective Date, **** of Net Sales of Licensed Products; and
- 6.1.3 During the two (2) year period commencing on the eighth anniversary of the Effective Date, **** of Net Sales of Licensed Products.

FASL shall not owe any royalties on Net Sales of Licensed Products occurring on or after the tenth anniversary of the Effective Date in consideration of the license hereunder to Parent Licensed Patents.

6.2 **Coatue Royalty Payments.** In consideration of the licenses set forth in Section 3.2 with respect to Coatue Licensed Patents and the license set forth in Section 5 of the Intellectual Property Contribution and Ancillary Matters Agreement, in addition to Basic Royalty Payments as set forth in Section 6.1, FASL shall pay to Parent during the period commencing volume shipment of FASL’s Coatue Product(s) and terminating on the third anniversary thereof, **** of Net Sales of Coatue Products (each a “**Coatue Royalty Payment**”). FASL shall not owe any royalties on Net Sales of Coatue Products, other than Basic Royalty Payments as set forth in Section 6.1, occurring on or after the third anniversary of such first customer shipment in consideration of the license hereunder to Coatue Licensed Patents.

6.3 **Reports.** FASL shall: (a) keep accurate and detailed accounts and records of all Royalty Payments due under this Agreement; and (b) within sixty (60) days after the last day of each Semi-Annual Period, deliver to Parent a statement of all Royalty Payments due to Parent, if any, during such Semi-Annual Period.

6.4 **Payment Terms.** Royalty Payments for Net Sales occurring during each Semi-Annual Period shall be made within sixty (60) days from the end of such Semi-Annual Period. All amounts payable by FASL to Parent shall be paid by wire transfer of U.S. Dollars in immediately available funds to such financial institution and account number as Parent may designate in writing to FASL.

6.5 **Exchange Rates.** In the event of any Net Sales from the sale or other distribution of a Licensed Product by FASL in any currency other than U.S. Dollars, for purposes of determining the Royalty Payment, FASL shall use the Exchange Rate in effect on the last day of the month in which such sale or other distribution was effected.

6.6 **Late Payments.** If FASL fails to make any payment on or before the required payment date, FASL shall be liable for interest on such payment, for the period commencing

on such required payment date and ending on the date such payment is made, at the rate of ten percent (10%) per annum or the maximum amount allowed by Applicable Law, whichever is less.

6.7 Taxes. In the event that FASL is required by Applicable Law to withhold any Tax from any amount payable by FASL to Parent hereunder, (a) FASL shall withhold such Tax and remit such withheld amount to the appropriate Governmental Authorities in accordance with Applicable Law and shall promptly report to Parent the amounts and dates of all such withholdings, and (b) the amount otherwise payable to Parent by FASL hereunder upon which such withholding is based shall be decreased accordingly; provided, that FASL shall in all events provide Parent with five Business Days advance written notice of the amount of any withholding to be made hereunder. FASL shall promptly furnish Parent with official copies (or certified copies if official copies are not available) of each Tax receipt received from any Governmental Authority and a copy of any document pertaining to Parent filed with any Governmental Authority (including United States Internal Revenue Service Form 1042-S), and shall furnish Parent with such other documentation relating to any such deductions or withholdings as may be reasonably requested by Parent. If at any time Parent believes that FASL may in the future adopt withholding practices in respect of Parent that are not in accordance with the requirements of Applicable Law, Parent shall notify FASL of the basis for its objection to such withholding practices and, if the matter cannot be resolved by agreement, FASL shall refer the issue to an independent law firm of national stature (which shall not be a law firm that is regularly used by FASL or AMD), which shall advise FASL concerning the legal obligations of FASL in respect of withholding, and thereafter FASL shall act consistently with such advice in matters pertaining to withholding. If FASL acts in accordance with the advice of such law firm and a Governmental Authority later asserts in writing to any Party that FASL failed to withhold Tax from amounts payable to Parent hereunder at the time and/or in the amounts required by Chapter 3 of the Code or comparable provisions of other Tax laws in respect of Parent, then Parent shall promptly upon receipt of a copy of such writing accompanied by a written notice from FASL specifying that a payment is required pursuant to this Section 6.7 pay to such Governmental Authority an amount in full satisfaction of the amount of Taxes so asserted by such Governmental Authority. If Parent does not promptly pay such amount to such Governmental Authority, then, unless Parent provides satisfactory written evidence of settlement in full of the matter asserted by the Governmental Authority, FASL shall withhold such amount from the next payment(s) to Parent, shall promptly pay such withheld amounts over to such Governmental Authority in payment of such asserted liability for Taxes.

6.8 Audit. Parent may audit the books and records of FASL and its Subsidiaries as may reasonably be required to verify the accuracy and sufficiency of FASL's payment of Royalty Payments hereunder. Any such audit shall be at Parent's expense; *provided* that, if such audit reveals an underpayment of five percent (5%) or more, FASL shall promptly pay to Parent all costs and expenses of such audit. FASL shall promptly pay Parent the amount of any underpayment revealed by any such audit. Parent's rights under this provision, with respect to Royalty Payments paid and payable on Net Sales occurring during each Semi-Annual Period, shall continue for a period of six (6) years after the last day of such Semi-Annual Period.

7. WARRANTIES AND DISCLAIMERS

7.1 **Warranties.** Subject to Section 10.1, each Party represents and warrants to the other Party that it has the right, and will continue during the term of this Agreement to have the right, to grant to or for the benefit of the other Party the rights and licenses granted hereunder in accordance with the terms of this Agreement and such grant of rights and licenses does not, and will not during the term of this Agreement, conflict with the rights and obligations of such Party under any other license, agreement, contract or other undertaking.

7.2 **Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ANY TRANSACTION DOCUMENT, NEITHER PARTY MAKES (AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS) ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

8. LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOSS OF PROFITS, REVENUE OR BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. TERM AND TERMINATION

9.1 **Term.** This Agreement will be effective as of the Effective Date, and will continue in full force and effect until the later to occur of (a) the tenth (10th) anniversary of the Effective Date, or (b) Parent transferring 100% of its membership interest in FASL or 100% of its economic interest in FASL, regardless of whether such transfer results in the admission of another member, at which time this Agreement shall terminate, unless earlier terminated as set forth in this Section 9.

9.2 **Termination for Change of Control of Party.** Either Party shall have the right to terminate this Agreement, or to invoke the provisions of Section 9.3.3 if this Agreement was previously terminated, in the event the other Party or its Semiconductor Group undergoes a Change of Control (including a Change of Control in connection with bankruptcy proceedings of such other Party) by giving thirty (30) days' written notice of termination or invocation to the other Party, *provided* that the terminating or invoking Party must exercise such right no later than ninety (90) days after receiving notice of such Change of Control.

9.3 Effect on Licenses

9.3.1 Upon termination of this Agreement pursuant to Section 9.1, the rights, licenses and immunities granted by each Party and its Subsidiaries hereunder shall survive such termination and shall continue until the expiration of the last to expire of the Licensed Patents, subject to Sections 9.2 and 9.3.3.

9.3.2 Upon termination of this Agreement pursuant to Section 9.2, the rights, licenses and immunities granted by each Party and its Subsidiaries hereunder shall survive such termination solely under those Licensed Patents that are entitled to an effective filing date that is on or before, and are licensed as of, the Change of Control Date, and shall continue until the expiration of the last to expire of such Licensed Patents, subject to Sections 9.2 and 9.3.3.

9.3.3 Upon termination of this Agreement pursuant to Section 9.2 or invocation of the provisions of this Section 9.3.3 pursuant to Section 9.2, the rights, licenses and immunities granted under Circuit Patents to Acquired Party and its Subsidiaries hereunder shall be limited solely to:

- (a) each Existing Product and Pending Product of Acquired Party and its Subsidiaries sublicensed hereunder as of the Change of Control Date (“**Acquired Party Covered Product**”);
- (b) each Existing Product and Pending Product of Acquirer as of the Change of Control Date that would have been in direct competition with an Acquired Party Covered Product if both such products were offered for sale contemporaneously by different Persons (“**Acquirer Competitive Product**”); and
- (c) Successor Products.

Notwithstanding anything to the contrary, once the rights, licenses and immunities granted under Circuit Patents to an Acquired Party and its Subsidiaries hereunder have been limited pursuant to this Section 9.3.3, in no event shall such rights, licenses and immunities be subsequently broadened or expanded to cover additional products or Patents.

9.4 Effect on Royalties. To the extent that FASL retains any of the licenses under Parent Licensed Patents other than Coatue Licensed Patents granted by Parent under Sections 3 and 5 following any termination of this Agreement, the obligations of FASL under Section 6.1 shall survive. To the extent that FASL retains any of the licenses under Coatue Licensed Patents granted by Parent under Sections 3 and 5 following any termination of this Agreement, the obligations of FASL under Section 6.2 shall survive. To the extent that Section 6.1 or Section 6.2 survives, Sections 6.3 through 6.8 shall survive.

9.5 Continuing Liability. The termination of this Agreement for any reason shall not release either Party from any liability, obligation or agreement which has already accrued at the time of termination. Termination of this Agreement for any reason shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages or otherwise, which a Party may have hereunder, at law or otherwise, or which may arise out of or in connection with such termination.

9.6 **Survival.** The provisions of Sections 1, 2, 4 (with respect to Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of prior to termination of the Agreement), 6, 8, 9.2, 9.3, 9.4, 9.5, 9.6 and 10, and any other sections of this Agreement to the extent expressly provided herein, shall survive any termination of this Agreement.

10. MISCELLANEOUS

10.1 **Limitation.** Nothing contained in this Agreement shall be construed as:

10.1.1 a warranty or representation by either Party or its Subsidiaries sublicensed hereunder as to the validity, enforceability or scope of any Licensed Patents; or

10.1.2 conferring upon either Party or its Subsidiaries sublicensed hereunder any license, right or privilege under any patents, utility models or design patents except the licenses, rights and privileges expressly granted hereunder; or

10.1.3 a warranty or representation that any acts licensed or sublicensed hereunder will be free from infringement of patents, utility models, design patents, copyrights, mask work rights or trade secrets other than those Patents under which licenses, rights and privileges have been expressly granted hereunder; or

10.1.4 an obligation of either Party or its Subsidiaries to file or maintain any patent application, secure any patent or maintain any patent in force; or

10.1.5 an arrangement to bring or prosecute actions or suits against third parties for infringement or conferring any right to bring or prosecute actions or suits against third parties for infringement;

10.1.6 conferring any right to use in advertising, publicly or otherwise, any trademark, service mark, trade name or their equivalent, or any contraction, abbreviation or simulation thereof, of either Party or its Subsidiaries sublicensed hereunder; or

10.1.7 derogating from or otherwise affecting Parent's non-competition obligations in Sections 2 and 3 of the Non-Competition Agreement for so long as such obligations remain in effect.

10.2 **Relationship of the Parties.** In the exercise of their respective rights, and the performance of their respective obligations hereunder, the Parties are, and will remain independent contractors. Nothing in this Agreement will be construed to constitute the Parties as partners, or principal and agent for any purpose whatsoever. Neither Party will bind, or attempt to bind, the other Party hereto to any contract or other obligation, and neither Party will represent to any third party that it is authorized to act on behalf of the other Party to this Agreement.

10.3 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction).

10.4 Dispute Resolution. The Parties hereby agree that claims, disputes or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement shall be resolved in accordance with the dispute resolution procedures set forth in Schedule A to the Operating Agreement applied *mutatis mutandis*.

10.5 Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

10.6 Successors and Assigns. Each Party shall have the right (with written notice to the other Party, but without the need to obtain the consent of the other Party) to assign this Agreement, together with all of its rights and obligations hereunder, to an Acquirer as part of a merger or consolidation of such Party or its Semiconductor Group with or into such Acquirer or a merger of such Acquirer into such Party, or as part of a sale of all or substantially all of the assets or business of such Party or its Semiconductor Group to such Acquirer, *provided* that the assigning Party's right to make such assignment is contingent and conditioned upon the non-assigning Party being accorded the right to terminate this Agreement or invoke the provisions of Section 9.3.3 following such merger, consolidation or sale of assets or business, as applicable, in accordance with the terms of Section 9.2; and *provided further* that such Acquirer assumes all of the assigning Party's obligations under this Agreement, including the obligation to grant, under all Licensed Patents of the assigning Party and its Subsidiaries licensed as of the Change of Control Date and all Acquirer Licensed Patents (subject to Section 3.3), the rights, licenses and immunities granted to the non-assigning Party and its Subsidiaries under Sections 2, 3 and 4 (as may be limited under Sections 9.3.2 and 9.3.3). In addition, each Party shall have the right (with written notice to the other Party, but without the need to obtain the consent of the other Party) to assign this Agreement, together with all of its rights and obligations hereunder, to a Subsidiary of such Party to which such Party transfers all or substantially all of the assets or business of its Semiconductor Group (for purposes of clarification, such transfer shall not be deemed a Change of Control of such Party or its Semiconductor Group). Except as expressly provided herein, the rights and obligations hereunder may not be assigned or delegated by a Party without the prior written consent of the other Party. Any purported assignment, sale, transfer, delegation or other disposition of such rights or obligations by either Party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party shall assign its rights under any of its Licensed Patents unless such assignment is made subject to the terms of this Agreement.

10.7 Entire Agreement; Amendment. This Agreement (including the Schedules hereto) and the other Transaction Documents constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof, and supersede any prior communications, representations, understandings and agreements, either oral or written,

between the Parties with respect to such subject matter; *provided, however*, that the rights, licenses and immunities granted to the Parties in such prior agreements shall survive the execution of this Agreement and the other Transaction Documents to the extent set forth in, and in accordance with the terms of, the FASL (Japan) Termination Agreement (including Section 3.6 thereof). This Agreement may not be altered or amended except by a written instrument signed by authorized legal representatives of both Parties and Fujitsu. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law or any other Transaction Document.

10.8 Notices and Other Communications. All notices required or permitted under this Agreement shall refer to this Agreement and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as follows:

If to FASL:

FASL LLC
c/o Advanced Micro Devices, Inc.
One AMD Place
M/S 150
P.O. Box 3453
Sunnyvale, California 94086
Attn: General Counsel
Telephone: (408) 749-2202
Facsimile: (408) 774-7399

With a copy to (which shall not constitute notice):

FASL LLC
915 DeGuigne Drive
Sunnyvale, California 94086
U.S.A.
Attention: Chief Executive Officer
Telephone: (408) 749-5172
Facsimile: (408) 749-2068

If to AMD:

Advanced Micro Devices, Inc.
One AMD Place
Sunnyvale, California 94086
U.S.A.
Attn: General Counsel
Telephone: +1 (408) 749-2202
Facsimile: +1 (408) 774-7399

With a copy to (which shall not constitute notice):

Advanced Micro Devices, Inc.
5204 East Ben White Boulevard
Mail Stop 563
Austin, Texas 78741
Attn: Vice President, Intellectual Property
Telephone: +1 (512) 602-0148
Facsimile: +1 (512) 602-4932

or to such other address or facsimile number as a Party may have specified to the other Party in writing delivered in accordance with this Section 10.8.

10.9 Expenses. Except as otherwise expressly set forth in this Agreement, each Party will bear its own costs and expenses, including fees and expenses of legal counsel and other representatives used or hired in connection with the transactions described in this Agreement.

10.10 Severability. If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will use their respective best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects the Parties' intent in entering into this Agreement.

10.11 Construction. This Agreement shall be deemed to have been drafted by both Parties and, in the event of a dispute, no Party hereto shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

10.12 Execution. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

10.13 **Confidentiality of Terms.** Neither Party shall disclose the terms of this Agreement to any third parties, except that either Party may disclose to third parties the existence of this Agreement and may disclose the terms of this Agreement to the extent reasonably necessary, in confidence, to its legal counsel, accountants, and banks and their advisors, and to its present or future financing sources for, potential investors in, and potential successors to, all or any portion of the assets or business of such Party.

[Remainder of page intentionally left blank.]

19

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first above written.

ADVANCED MICRO DEVICES, INC.

FASL LLC

By: /s/ Thomas M. McCoy

By: /s/ Thomas M. McCoy

Name: Thomas M. McCoy
Title: Senior Vice President, General Counsel

Name: Thomas M. McCoy
Title: Manager

S-1

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

AMD DISTRIBUTION AGREEMENT

JUNE 30, 2003

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

AMD DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (this “**Agreement**”) is made and entered into as of June 30, 2003 (the “**Effective Date**”), by and between FASL LLC, a Delaware limited liability company (“**FASL**”), and Advanced Micro Devices, Inc., a Delaware corporation (“**AMD**”). FASL and AMD are hereinafter also referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, pursuant to the Amended and Restated Limited Liability Company Operating Agreement, dated June 30, 2003 (the “**LLC Operating Agreement**”), among AMD, AMD Investments, Inc., a Delaware corporation (“**AMDI**”), Fujitsu Limited, a Japanese corporation (“**Fujitsu**”), and Fujitsu Microelectronics Holding, Inc., a Delaware corporation (“**FMH**”), and the Contribution and Assumption Agreement (the “**Contribution Agreement**”), among AMD, AMDI, Fujitsu, FMH and FASL, AMD and Fujitsu have formed FASL for the purpose of designing, manufacturing and marketing flash memory products; and

WHEREAS, as part of such joint venture arrangement, AMD and Fujitsu have agreed that FASL will appoint AMD and Fujitsu as FASL’s sole initial distributors of Products (as defined below).

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and other terms and conditions contained herein, FASL and AMD agree as follows:

AGREEMENT

1. DEFINITIONS; INTERPRETATION

1.1 **Capitalized but Undefined Terms.** Capitalized terms used in this Agreement but not defined herein shall have the meaning ascribed to such terms in the LLC Operating Agreement.

1.2 **Terms Defined in this Agreement.** The following terms when used in this Agreement shall have the following definitions:

1.2.1 “**Action Plan**” has the meaning set forth in Section 14.2.1.

1.2.2 “**Affiliate**” is defined in the LLC Operating Agreement.

1.2.3 “**AMD Account**” means a Customer listed as such on Schedule 2.1.

1.2.4 “**AMD Extended Period Support Customer**” means a Customer listed as such on Schedule 2.1.

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

1.2.5 “**AMD PRC Customers**” means the Customers set forth in Section A of Schedule 1.2.5 and such other Customers that are specified as AMD PRC Customers in accordance with Section B of Schedule 1.2.5.

1.2.6 “**AMD Short Term Support Customer**” means a Customer listed as such on Schedule 2.1.

1.2.7 “**AMD Territory**” means the Americas and Europe.

1.2.8 “**AMD Transitional Support Customer**” means, collectively, the AMD Short Term Support Customers and the AMD Extended Period Support Customers.

1.2.9 “**Americas**” means the countries and territories of North America, Central America and South America.

1.2.10 “**Best Efforts**” means the efforts that a prudent Entity or person desiring to achieve a particular result would use in order to achieve such result reasonably expeditiously. An obligation to use “Best Efforts” does not require the Entity or person subject to such obligation to take actions that would result in a materially adverse change in the benefits to such Entity or person of this Agreement.

1.2.11 “**Channel Partner**” means any Entity other than an AMD Subsidiary who is appointed by AMD as a sub-distributor or sales representative, pursuant to a written agreement between AMD and such Entity in accordance with Section 5.2. A list of Channel Partners as of the Effective Date is set forth in Schedule 1.2.11. AMD will provide FASL with an updated Schedule 1.2.11 or other reasonable form of notice from time to time whenever it appoints a new Channel Partner or terminates an existing Channel Partner.

1.2.12 “**Claims**” is defined in Section 19.

1.2.13 “**Combined Product**” means any Product that contains both (a) FASL Content, and (b) components or products manufactured by any other Entity, which components or products do not constitute FASL Content.

1.2.14 “**Confidential Information**” has the meaning set forth in Section 16.1.

1.2.15 “**Customer**” means an Entity, other than AMD in its capacity as distributor hereunder, that purchases Products, but excluding Channel Partners.

1.2.16 “**Custom Product**” means any Product that has sufficiently unique attributes that it may only be sold to a single Customer or to a limited number of Customers. In addition, if a Product is being discontinued or has been discontinued on a general basis, as set forth in Section 10.2 below, but may still be made available to specific Customers, then it too shall be considered a Custom Product. FASL will identify all Custom Products as such in FASL’s then-current Quarterly price list or other reasonable form of communication to AMD, including an end-of-life notice, if applicable.

1.2.17 “**Disclosing Party**” has the meaning set forth in Section 16.1.

1.2.18 “**Documentation**” means any and all documents or materials, whether in printed form or in any electronic form or media, that relate to Products and are provided by FASL to AMD hereunder, including marketing materials and brochures, manuals, published Product price lists and Product specifications, but expressly excluding documents that constitute Confidential Information of FASL.

1.2.19 “**Entity**” means a corporation, partnership, limited liability company, unincorporated organization, business association, firm, joint venture or other legal entity.

1.2.20 “**Europe**” means the countries and territories of Europe, as listed on Schedule 1.2.20.

1.2.21 “**FAE**” means a field applications engineer.

1.2.22 “**FASL Board**” means the Board of Managers of FASL.

1.2.23 “**FASL Content**” means components or products manufactured by FASL or a FASL Subsidiary, or components or products specifically manufactured by any other Entity, including AMD or Fujitsu or any third party subcontractor or foundry, on behalf of FASL or a FASL Subsidiary at FASL’s or the FASL Subsidiary’s direction and based on (a) technology or intellectual property owned by FASL, or which FASL otherwise has the right to use, or (b) designs provided by FASL, which designs are proprietary to FASL or a third party licensor of FASL.

1.2.24 “**FASL Content Only Product**” or “**FCO Product**” means any Product that contains only FASL Content.

1.2.25 [Intentionally omitted.]

1.2.26 “**Force Majeure**” has the meaning set forth in Section 21.9.1.

1.2.27 “**Forecast**” has the meaning set forth in Section 4.1.

1.2.28 “**Forecasted Product Requirements**” has the meaning set forth in Section 4.1.

1.2.29 “**Fujitsu Account**” means a Customer listed as such on Schedule 2.1.

1.2.30 “**Fujitsu Extended Period Support Customer**” means a Customer listed as such on Schedule 2.1.

1.2.31 “**Fujitsu PRC Customers**” means the Customers set forth in Section A of Schedule 1.2.31 and such other Customers that are specified as Fujitsu PRC Customers in accordance with Section B of Schedule 1.2.31.

1.2.32 “**Fujitsu Short Term Support Customer**” means a Customer listed as such on Schedule 2.1.

1.2.33 “**Fujitsu Territory**” means Japan.

1.2.34 “**Fujitsu Transitional Support Customers**” means, collectively, the Fujitsu Short Term Support Customers and the Fujitsu Extended Term Support Customers.

1.2.35 “**Global Account**” means a Customer listed as such on Schedule 2.1.

1.2.36 “**Guidelines**” has the meaning set forth in Section 6.4.

1.2.37 “**INCOTERMS 2000**” means the International Rules for the Interpretation of Trade Terms, published by the International Chamber of Commerce in the year 2000.

1.2.38 “**Intellectual Property Rights**” means, on a world-wide basis, any and all now known or existing, or hereafter known or existing, tangible and intangible (a) rights associated with works of authorship, including copyrights, moral rights and mask-works, (b) rights associated with trademarks, service marks, trade names, logos and similar rights, (c) trade secret rights, (d) rights in patents, designs and algorithms and other industrial property rights, (e) rights in domain names; (f) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract, license or otherwise, and (f) all registrations, applications, renewals, extensions, continuations (including continuations in part), divisions, reexaminations or reissues thereof now or hereafter existing, made or in force (including any rights in any of the foregoing).

1.2.39 “**Joint Territory**” means anywhere in the world other than the AMD Territory and the Fujitsu Territory.

1.2.40 “**Leads**” has the meaning set forth in Section 11.4.

1.2.41 “**Marketing Plan**” has the meaning set forth in Section 11.1.2.

1.2.42 “**Ownership Interest**” means the percentage interest of FASL common membership interests then held collectively by AMD and its Subsidiaries, *divided by* all then issued and outstanding FASL common membership interests.

1.2.43 “**PRC**” means the People’s Republic of China.

1.2.44 “**Product Distribution Center**” has the meaning set forth in Section 7.1.

1.2.45 “**Production Volume**” means, for a particular Technology for a particular Quarter, FASL’s projected volume of Wafer Outputs for such Technology during such Quarter, as determined by FASL at the beginning of the relevant Quarter using FASL’s then-current QBP for such Quarter.

-
- 1.2.46 “**Product**” means any finished product of FASL.
- 1.2.47 “**Purchase Order**” has the meaning set forth in Section 3.1.
- 1.2.48 “**Purchase Price**” means the price per Product at which FASL shall sell such Product to AMD in accordance with Section 12.
- 1.2.49 “**Q0**” has the meaning set forth in Section 4.2.3.
- 1.2.50 “**Q1**” has the meaning set forth in Section 4.2.3.
- 1.2.51 “**Q2**” has the meaning set forth in Section 4.2.3(b).
- 1.2.52 “**Q3**” has the meaning set forth in Section 4.2.3(c).
- 1.2.53 “**Quarter**” means a FASL fiscal quarter.
- 1.2.54 “**Receiving Party**” has the meaning set forth in Section 16.1.
- 1.2.55 “**RSP**” has the meaning set forth in Section 12.1.
- 1.2.56 “**Standard Product**” means any Product that is not a Custom Product. FASL will identify all Standard Products as such in FASL’s then-current Quarterly price list.
- 1.2.57 “**Stocking Channel Partner**” means a Channel Partner that is designated as such by AMD pursuant to Section 5.3.3.
- 1.2.58 “**Subsidiary**” is defined in the Contribution Agreement.
- 1.2.59 “**Technology**” means each process technology used by FASL in the production of Products. A list of Technologies as of the Effective Date is set forth in Schedule 1.2.59. FASL will provide AMD with an updated Schedule 1.2.59 or other reasonable form of notice from time to time whenever it adds a new Technology, or whenever it decides to no longer produce Products using a then-existing Technology.
- 1.2.60 “**Term**” has the meaning set forth in Section 20.1.
- 1.2.61 “**Trademarks**” means any trademarks, trade names, service marks and logos used by FASL in connection with Products, including those marks, names and logos set forth in Schedule 1.2.61 attached hereto.
- 1.2.62 “**Transition Plan**” has the meaning set forth in Section 2.1.4.
- 1.2.63 “**VAT**” has the meaning set forth in Section 12.8.
- 1.2.64 “**Wafer Output**” means a semiconductor wafer manufactured by or for FASL for a specific Technology.

1.2.65 “**Warranty Period**” has the meaning set forth in Section 15.1.

1.3 Interpretation.

1.3.1 Certain Terms. The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.”

1.3.2 Section References; Titles and Subtitles. Unless otherwise noted, all references to Sections, Schedules and Exhibits herein are to Sections, Schedules and Exhibits of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

1.3.3 Reference to Entities, Agreements, Statutes. Unless otherwise expressly provided herein, (a) references to an Entity include its successors and permitted assigns, (b) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (c) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation.

2. APPOINTMENT; GRANT OF RIGHTS

2.1 Grant of Distribution Rights; Transitional Support.

2.1.1 Grant of Rights. Subject to the terms and conditions of this Agreement, FASL grants to AMD the right to market, sell and otherwise distribute Products during the Term (a) in the AMD Territory and in the Joint Territory, (b) to AMD Affiliates, AMD Accounts and Global Accounts wherever located and (c) to AMD PRC Customers in the PRC. No other grant of distribution rights to AMD is implied by this Agreement.

2.1.2 Transitional Support.

(a) Subject to the terms and conditions of this Agreement, FASL grants AMD the following rights during the Term with respect to AMD Transitional Support Customers:

(i) With respect to each AMD Short Term Support Customer, FASL grants AMD the right to market, sell and otherwise distribute Products in the Fujitsu Territory to such Customer; *provided, however*, that (A) AMD shall not engage in any new design activity in the Fujitsu Territory for any such Customer, and (B) AMD shall transition sales support for each such Customer in the Fujitsu Territory to Fujitsu as soon as reasonably practicable (as reasonably determined by FASL, taking into account various factors, including the preservation of Customer relationships and Customer demands and requirements). This right shall terminate as to each such Customer upon completion of the transition with respect to such Customer.

(ii) With respect to each AMD Short Term Support Customer that is also a Fujitsu Account, FASL grants AMD the right to market, sell and otherwise distribute Products throughout the world to such Customer; *provided, however*, that (A) AMD shall not engage in any new design activity anywhere in the world for such Customer, and (B) AMD shall transition sales support for each such Customer to Fujitsu as soon as reasonably practicable (as reasonably determined by FASL, taking into account various factors, including the preservation of Customer relationships and Customer demands and requirements). This right shall terminate as to each such Customer upon completion of the transition with respect to such Customer.

(iii) With respect to each AMD Extended Period Support Customer, FASL grants to AMD the right to market, sell and otherwise distribute Products in the Fujitsu Territory to such Customer. At such time that FASL reasonably determines that (A) Fujitsu has sufficient resources to provide such Customer with a sufficient level of support in the Fujitsu Territory as AMD (as measured by various factors, including the number of salespeople and the level of technical competence of Fujitsu's sales force in light of such Customer's Product needs), and (B) such Customer is open and willing to purchase Products from Fujitsu in the Fujitsu Territory, FASL shall issue a certification in writing to AMD (with a copy to Fujitsu) that FASL has made such determination. Upon receipt of such certification, this right shall terminate.

(b) Subject to the terms and conditions of this Agreement:

(i) With respect to each Fujitsu Short Term Support Customer, AMD agrees and acknowledges that, pursuant to the Fujitsu Distribution Agreement, FASL shall grant to Fujitsu the right during the Term to market, sell and otherwise distribute Products in the AMD Territory to such Customer; *provided, however*, that upon the transfer of sales support for each such Customer from Fujitsu to AMD in accordance with the Fujitsu Distribution Agreement, this right shall terminate.

(ii) With respect to each Fujitsu Short Term Support Customer that is also an AMD Account, AMD agrees and acknowledges that, pursuant to the Fujitsu Distribution Agreement, FASL shall grant to Fujitsu the right during the Term to market, sell and otherwise distribute Products throughout the world to such Customer; *provided, however*, that upon the transfer of sales support for each such Customer from Fujitsu to AMD in accordance with the Fujitsu Distribution Agreement, this right shall terminate.

(iii) With respect to each Fujitsu Extended Period Support Customer, AMD agrees and acknowledges that, pursuant to the Fujitsu Distribution Agreement, FASL shall grant to Fujitsu during the Term the right to market, sell and otherwise distribute Products in the AMD Territory to such Customer. At such time that FASL reasonably determines that (A) AMD has sufficient resources to provide such

Customer with a sufficient level of support in the AMD Territory as Fujitsu (as measured by various factors, including the number of salespeople and the level of technical competence of AMD's sales force in light of such Customer's Product needs), and (B) such Customer is open and willing to purchase Products from AMD in the AMD Territory, FASL shall issue a certification in writing to Fujitsu (with a copy to AMD) that FASL has made such determination. Upon receipt of such certification, this right shall terminate.

2.1.3 Location of Sale. For purposes of determining the location of a sale of any Product, the "ship to" location on the Purchase Order shall be determinative.

2.1.4 Transition Plan. Promptly after the Effective Date, AMD and FASL shall meet and develop written transition plans for each AMD Short Term Support Customer, each such plan setting forth in reasonable detail the steps and actions that each Party shall be required to take, and the events that shall be required to occur, in order for support for the relevant Customer to transfer from AMD to Fujitsu (each, a "**Transition Plan**"). Each Party will act in accordance with the Transition Plans. In addition, FASL shall use Best Efforts to require Fujitsu to comply with the transition plans that are developed and agreed by FASL and Fujitsu in accordance with the Fujitsu Distribution Agreement.

2.2 Appointment of Other Distributors by FASL.

2.2.1 In the Joint Territory. FASL shall have the right to appoint additional distributors or sales representatives in the Joint Territory.

2.2.2 In the AMD Territory; Other Customers. Subject to Section 14 and for so long as AMD maintains an Ownership Interest of at least twenty-five percent (25%), FASL shall not have the right to appoint any additional distributors or sales representatives, or grant any existing distributor or sales representative (other than AMD) any additional rights, in the AMD Territory or with respect to an AMD Account, Global Account or AMD PRC Customer without AMD's prior written consent, which consent may be withheld in its sole discretion.

2.2.3 No Sales by FASL. Notwithstanding anything to the contrary herein, unless otherwise agreed by the parties on a case-by-case basis, in no event shall FASL sell or otherwise distribute any Products (or any wafers, die or work-in-progress), except through (i) AMD pursuant to and in accordance with the terms of this Agreement, (ii) Fujitsu pursuant to and in accordance with the terms of the Fujitsu Distribution Agreement, (iii) the appointment of additional distributors or sales representatives in accordance with the terms of this Agreement or the Fujitsu Distribution Agreement; or (iv) as may otherwise be permitted by procedures that may be added to the LLC Operating Agreement subsequent to the Effective Date in accordance with its terms.

2.3 AMD Obligations and Restrictions.

2.3.1 **Best Efforts.** AMD shall use its Best Efforts to promote the sale of Products in the AMD Territory. In light of the foregoing, the application of the provisions of Section 2306(2) of the California Commercial Code to the Parties is hereby excluded.

2.3.2 **Commitments.** Notwithstanding anything to the contrary herein, AMD shall have **** on behalf of FASL with respect to Product availability.

2.3.3 **Inventory.** AMD shall not, and shall cause its Subsidiaries not to, maintain an inventory of Products intended to be used for re-sale by Customers, *provided* that AMD and any AMD Subsidiary may maintain a limited, reasonable number of Products to use as Product samples in connection with demand creation activities in accordance with Section 11.5. Notwithstanding anything to the contrary in the foregoing, AMD and its Subsidiaries shall have the right, as of the Effective Date, to collectively possess **** inventory of Products across all Technologies, which inventory AMD and its Subsidiaries may retain and sell in the ordinary course of business, *provided* that such inventory shall be eliminated within a reasonable period of time after the Effective Date. The foregoing restrictions and obligations regarding inventory shall not apply to Channel Partners.

2.3.4 **NADC.** Notwithstanding anything to the contrary in the foregoing, AMD shall have the right, from and after the Effective Date, to hold up to **** inventory of Product in its North America Distribution Center ("NADC"), *provided* that NADC's target level of Product inventory shall be **** inventory. From time to time, AMD may request the right to hold more than **** inventory at NADC to address special market opportunities and FASL will not unreasonably withhold its consent to permit AMD to hold additional inventory at NADC to address those opportunities, taking into account existing firm purchase orders from Customers and AMD's then-current good faith forecast for quick-turn business opportunities. Title and risk of loss with respect to such inventory shall remain with FASL until such time that AMD places a Purchase Order for the relevant Products in accordance with Section 3.1. AMD will maintain any such inventory at no cost to FASL, and will report on the amount and status of such inventory from time-to-time as reasonably requested by FASL. Without limiting the foregoing, AMD agrees to use Best Efforts to provide FASL as soon as it may be practicable daily point-of-sales reports in a format and including the information reasonably designated by FASL regarding all such inventory. Initial point-of-sale reports will contain the types of information specified in Schedule 2.3.4. Notwithstanding anything to the contrary in Section 12.5 below, payments for Products held at the NADC in accordance with this Section 2.3.4 shall be made within sixty (60) days from the date of shipment of such Products to a Customer or Channel Partner.

3. ORDERING; SHIPPING

3.1 **Orders.** AMD will accept purchase orders for Products from Customers and Channel Partners in accordance with its customary practices. To purchase Product(s) from FASL, AMD shall issue purchase orders ("**Purchase Orders**"), which shall specify the Purchase Order number, type and quantity of Product(s) ordered, Purchase Price (and the price to be paid to AMD for the Product(s) by the relevant Customer or Channel Partner, but only if such price is

**** the **** for the Product(s)), place(s) of delivery (which shall be the location identified in the relevant Customer or Channel Partner purchase order issued to AMD), and delivery date(s). These Purchase Orders may take the form of electronic submissions in a mutually-acceptable format (including submissions currently referred to as “**B+B+B files**”) so long as they contain the same information specified above for Purchase Orders, even if such submissions may not be referred to specifically as “purchase orders” when transmitted. AMD shall place each Purchase Order with FASL sufficiently in advance of the delivery date to allow for FASL’s Product delivery lead times, as set forth in FASL’s most recent lead time report provided to AMD. FASL shall accept any Purchase Order submitted by AMD to the extent that such Purchase Order (a) is within the Product allocation assured to AMD in accordance with Section 4.2, (b) conforms to the foregoing lead times, and (c) does not provide for a “ship to” location, Customer or Channel Partner that is inconsistent with AMD’s distribution rights hereunder. FASL will not accept any order to purchase Products under this Agreement from any Entity or person other than AMD without AMD’s prior written consent. Notwithstanding the foregoing, with respect to Purchase Orders for Custom Products, FASL shall not be required to accept such Purchase Orders, but FASL shall not unreasonably withhold acceptance of any such Purchase Order that is consistent with the terms of this Agreement, taking into account such factors as the requested delivery date, pricing and inventory. FASL shall not withhold acceptance of any Purchase Order for Custom Products on a basis that provides AMD less favorable treatment than any other FASL distributor or sales representative submitting orders for similar quantities of the same or similar Custom Products; *provided* that any pre-existing commitments to any distributor may take precedence over any new commitments for Custom Products so long as FASL makes such determinations on a commercially reasonable and non-discriminatory basis. FASL shall notify AMD as soon as possible if FASL believes that a Purchase Order for either Standard Products or Custom Products does not meet the foregoing requirements for acceptance by FASL. If the Purchase Order includes a pricing term inconsistent with the terms of this Agreement, such pricing term shall not apply and the pricing provisions set forth in Section 12 below shall take precedence.

3.2 **Cancellations.** AMD may cancel any Purchase Order or portion thereof for Standard Products, without charge, upon written notice to FASL at least thirty (30) days prior to the applicable delivery date. FASL will determine cancellation policies, procedures and charges with respect to Custom Products, and with respect to Standard Products where notice of cancellation is given less than thirty (30) days prior to the applicable delivery date, in advance of AMD’s placement of the applicable Purchase Order and will inform all distributors of such cancellation policies and apply such policies to all distributors, although the parties acknowledge that exceptions may be made on a case-by-case basis to address particular Customer situations. The Parties will discuss in good faith any cancellations of delivery of Custom Products, or of Standard Products where notice of cancellation is given less than thirty (30) days prior to the applicable delivery date, requested by AMD, but the final determination will be FASL’s.

3.3 **Reschedules.** AMD may reschedule the delivery of any Purchase Order or portion thereof for Standard Products, without charge, one time only, upon notice to FASL at least thirty (30) days prior to the applicable delivery date. Standard Product reschedules may be made less than thirty (30) days prior to the applicable delivery date, but only upon the agreement of FASL.

Any reschedules on less than thirty (30) days prior notice shall be subject to reschedule fees payable to FASL in an amount set by FASL in advance of AMD's placement of the applicable Purchase Order. FASL will also determine reschedule policies, procedures and rights and charges with respect to Custom Products in advance of AMD's placement of the applicable Purchase Order. FASL will inform all distributors of its reschedule policies in respect of Standard Products and Custom Products and apply such policies to all distributors although the parties acknowledge that exceptions may be made on a case-by-case basis to address particular Customer situations. The Parties will discuss in good faith any rescheduling of delivery of Custom Products, or of Standard Products where notice of rescheduling is given less than thirty (30) days prior to the applicable delivery date, requested by AMD, but the final determination will be FASL's.

3.4 Shipping. FASL shall notify AMD at the time of shipment as to the quantity of Product(s) shipped and the specific shipping information. Shipping quantities may not vary from those established by the Purchase Order unless otherwise mutually agreed upon in writing by the Parties. FASL shall deliver the ordered Product by the applicable delivery date(s), *provided* that FASL may not deliver such Product earlier than the delivery date specified in the applicable Purchase Order. Upon a bona fide, reasonable, ****, AMD may specify that Product shipments may not be late and if FASL has agreed in advance for **** that a particular shipment—or shipments in general ****—will be subject to timeliness requirements, then in the event that any shipment is delayed and not timely, AMD may direct FASL to ship such Products by reasonable premium transportation designated by AMD and FASL shall bear the reasonable expense of any difference in cost due to such premium transportation. FASL shall ship the ordered Product(s) to the delivery address(es) set forth in the applicable Purchase Order.

3.5 Title and Risk of Loss.

3.5.1 Shipment from FASL Facility Directly to Customers or Stocking Channel Partners. Delivery of Products from any FASL facility directly to Customers or Stocking Channel Partners, or to AMD's ****, shall be **** in accordance with INCOTERMS 2000, unless otherwise agreed in writing by the Parties, and title and risk of loss shall pass from FASL to AMD ****, which shall be ****, a **** or a ****.

3.5.2 Shipment from Product Distribution Centers. Delivery of Products from any Product Distribution Center to a Customer or a Stocking Channel Partner, or to AMD's ****, shall be **** in accordance with INCOTERMS 2000, unless otherwise agreed by the Parties, and title and risk of loss shall pass from FASL to AMD **** at **** at the ****, in accordance with ****, as interpreted in accordance with INCOTERMS 2000. Without limiting the foregoing, AMD will bear **** attributable to **** from the **** to a ****. FASL will bear **** to ship Products directly from FASL, a FASL Subsidiary or a FASL subcontractor facility to the Product Distribution Center, the AMD Sub ****.

4. FORECASTS; PRODUCT ALLOCATIONS

4.1 Forecasts. AMD working together with FASL shall, on or before the end of the last week of the first month of each Quarter, provide FASL with a non-binding forecast (a

“Forecast”) setting forth AMD’s projected Product needs for each of the five (5) Quarters following such Quarter (“Forecasted Product Requirements”). Each Forecast will be organized by FASL on a Technology-by-Technology basis, and will contain a forecast for each Product within a particular Technology. AMD’s initial Forecast is attached hereto as Schedule 4.1.

4.2 Short-Supply Guaranteed Allocation.

4.2.1 Allocation. Subject to Section 4.2.3 below, in the event that, in any Quarter, FASL does not produce enough wafers within a Technology to meet the total orders for Product falling within such Technology issued by AMD and Fujitsu, FASL will allocate its wafer fabrication and assembly, test and package Production Volume for such Technology as follows:

(a) to AMD, **** of Production Volume for such Products for such Quarter;

(b) to Fujitsu, **** of Production Volume for such Products for such Quarter; and

(c) such **** of Production Volume for the relevant Technology to either AMD or Fujitsu or otherwise, as reasonably **** (**** to the interests of either AMD or Fujitsu).

4.2.2 Adjustments Based on ****. In the event that **** is **** as set forth below, then, in determining **** for purposes of Section 4.2.1, the **** in Section 4.2.1(b) shall be ****:

(a) in the event **** is **** to or **** than **** and ****, the **** of Production Volume in Section 4.2.1(b) shall be **** to ****;

(b) in the event **** is **** to or **** than **** and ****, the **** of Production Volume in Section 4.2.1(b) shall be ****; and

(c) in the event **** is ****, the **** Production Volume in Section 4.2.1(b) shall be **** to ****.

4.2.3 Adjustments Based on ****. If (a) in any Quarter (for purposes hereof, “Q1”), FASL does not produce enough Product within a Technology to meet the total orders for Product falling within such Technology issued by AMD and Fujitsu, and (b) in the ****, AMD purchased Products falling within such Technology representing, as a ****, an amount **** in accordance with Sections 4.2.1 and 4.2.2 (unless such failure to purchase resulted from FASL’s inability to provide AMD with the ****), then, in such event:

(a) For such Quarter (Q1), FASL will **** AMD its wafer fabrication and assembly, test and package Production Volume for such Technology, the ****

Production Volume for such Technology that is the **** of (i) the **** Production Volume for such Technology purchased by AMD ****, and (ii) the **** Production Volume for such Technology to which AMD is **** pursuant to Sections 4.2.1 and 4.2.2; and

(b) For the subsequent Quarter (for purposes hereof, "Q2"), **** that **** or that it forecasted it would purchase **** if such amount was lower, FASL will **** to AMD its wafer fabrication and assembly, test and package Production Volume for such Technology, the **** Production Volume for such Technology to which AMD is **** pursuant to Sections 4.2.1 and 4.2.2.

(c) If, however, **** for Q1 and **** for Q1, its **** for the **** be calculated as set forth in subsection (a) above. If AMD thereafter **** or that it forecasted, then for the subsequent Quarter ****, FASL will **** to AMD its wafer fabrication and assembly, test and package Production Volume for the applicable Technology, the **** Production Volume for such Technology to which AMD is entitled pursuant to Sections 4.2.1 and 4.2.2.

4.3 FASL Adjustments to Production Volume. Notwithstanding anything to the contrary in this Section 4, FASL shall use all commercially reasonable efforts to increase or reduce, as applicable, Production Volume to reflect AMD's Forecasted Product Requirements and Fujitsu's forecasted product requirements. FASL shall **** Production Volume ****, *provided* that FASL's ability to so adjust Production Volume shall be subject to the guidelines with respect to inventory build up set forth in Section 8.8 of the LLC Operating Agreement.

4.4 Additional Capacity.

4.4.1 FASL Adding Capacity. In the event that FASL adds additional production capacity that is not contemplated by the **** Financial Support Plan, AMD, FASL and Fujitsu shall negotiate, in good faith, and agree as to how additional Production Volume generated therefrom shall be shared among the parties; *provided, however*, that in no event shall **** to **** such **** or **** with respect thereto.

4.4.2 Request for Additional Capacity from AMD. In the event (a) AMD requests that FASL add additional capacity not contemplated by the **** Financial Support Plan, (b) ****.

4.4.3 Request for Additional Capacity from Fujitsu. ****.

5. SUBSIDIARIES AND CHANNEL PARTNERS

5.1 **Right to Appoint Subsidiaries.** FASL hereby grants to AMD the right during the Term to appoint any Subsidiary as a subdistributor or sales representative of AMD, *provided* that such appointment is on terms and conditions consistent with this Agreement, including that any such Subsidiary will abide by the inventory restrictions applicable to AMD pursuant to Section 2.3.3.

5.2 Right to Appoint Channel Partners. Subject to the terms and conditions of this Agreement, FASL hereby grants to AMD the right during the Term to appoint Channel Partners (through multiple tiers), *provided* that each Channel Partner enters into a distribution or sales representative agreement with AMD pursuant to which each such Channel Partner acknowledges that its rights to market, sell or otherwise distribute Products are no broader than, and are subject to at least the same limitations as, the rights granted by FASL to AMD in this Agreement. Consistent with the goals of Section 2.3.1, AMD will use its Best Efforts to select and retain Channel Partners that will effectively promote and accomplish the sale of Products, regardless of what other business AMD may carry on with such Channel Partners. In addition, as part of the quarterly business review described in Section 13, the Parties will discuss the performance of the Channel Partners and discuss possible ways to improve the mix of Channel Partners or improve the performance of existing Channel Partners.

5.3 Channel Management. With respect to its Channel Partners, AMD will:

5.3.1 use commercially reasonable efforts to enforce the terms and conditions of its agreements with its Channel Partners, including the sub-distributor obligations set forth in Schedule 5.3.1;

5.3.2 provide each Channel Partner with commercially reasonable field sales and field applications support, and with commercially reasonable assistance in connection with each such Channel Partner's promotion and sale of Products; *provided* that AMD shall have no obligation to provide field applications support in the Fujitsu Territory;

5.3.3 use commercially reasonable efforts to ensure that each Channel Partner designated as a "stocking" Channel Partner by AMD (which designation shall be made by AMD in its sole discretion) maintains a representative minimum level of Product inventory in order to ensure timely off-the-shelf delivery of Products to Customers;

5.3.4 use commercially reasonable efforts to ensure that each Channel Partner complies with FASL's distribution policies and procedures; and

5.3.5 use Best Efforts to ensure its Channel Partners have the ability to successfully promote Products in the regions in which they are actively pursuing Product sales.

5.4 Stock Rotations. AMD shall have the right to accept Product stock rotation returns from its Stocking Channel Partners in accordance with FASL's **** stock rotation policies, *provided* that AMD shall not permit any Stocking Channel Partner to return **** Products held as inventory by such Stocking Channel Partner, based upon net shipments and in accordance with the time frames and procedures specified by FASL. FASL will notify AMD in advance of AMD's placement of the applicable Purchase Orders of its stock rotation policies and agrees to provide AMD ****. If AMD accepts Product stock rotation returns from any Stocking Channel Partner, AMD shall promptly return such Products to FASL. AMD will, on a Quarterly basis, provide FASL with a written report regarding stock rotation returns by AMD to FASL, such written report identifying the Stocking Channel Partner that returned Products and specifying the Products returned (by Product number, and amount). On a Quarterly basis, FASL shall perform

an inspection and audit of the returned Products, and in the normal course of business ****. In order to pass inspection, all Products returned in accordance with this Section 5.4 must be in their original, unopened factory-sealed unit packaging containers and otherwise unaltered.

5.5 **Termination of a Channel Partner.** Upon termination of a Channel Partner relationship, AMD will promptly update Schedule 1.2.11 and, as applicable and if directed by FASL, ****. If so requested by FASL, AMD will **** to FASL at ****.

6. TRADEMARK LICENSE AND RESTRICTIONS; MAINTENANCE; DOCUMENTATION

6.1 **License.** Subject to the terms and conditions of this Agreement, FASL hereby grants to AMD a non-exclusive, royalty-free, fully paid up license (including the right to grant sublicenses), during the Term, to use and display the Trademarks in the AMD Territory and Joint Territory, and anywhere else in the world in connection with **** and AMD ****, in all cases solely in connection with the marketing, promotion, advertisement, sale and distribution of Products as expressly permitted herein, and in connection with AMD's obligations set forth in Sections 5, 9 and 11. AMD shall not have the right to use the Trademarks to form combination marks with other trademarks, service marks, trade names, designs and logos.

6.2 **No Additional Rights.** AMD shall not use any other trademark or service mark confusingly similar to the Trademarks without the prior written approval of FASL. AMD understands and agrees that (a) as between the Parties, FASL is the sole owner of all right, title and interest in and to the Trademarks, (b) the use of any Trademark in connection with this Agreement shall not create in AMD any right, title or interest in or to the Trademarks, and (c) all such use and goodwill associated therewith shall inure solely to the benefit of FASL. AMD shall not challenge the validity of the Trademarks, nor shall AMD challenge or take any action inconsistent with FASL's ownership of the Trademarks or the enforceability of FASL's rights therein, unless the Trademark in question is used (without violation of FASL's rights) or owned by AMD (whether or not such Trademark is registered in any particular jurisdiction) prior to FASL's adoption or use of the Trademark, as demonstrated by AMD.

6.3 **Registration.** FASL shall retain the exclusive right to apply for and obtain registrations for the Trademarks throughout the world. AMD, upon FASL's reasonable request, agrees to reasonably cooperate with FASL's preparation and filing of any applications, renewals or other documentation necessary or useful to protect FASL's Intellectual Property Rights in the Trademarks, including by providing FASL with brochures, manuals, advertisements and other materials concerning Products. Any cooperation that AMD provides in accordance with this Section 6.3 shall be at FASL's sole cost, *provided* that such costs are reasonably incurred.

6.4 **Quality Control.** All use of the Trademarks shall be in accordance with the FASL trademark guidelines attached hereto as Exhibit 6.4, as may be reasonably amended from time to time by FASL upon reasonable prior written notice to AMD ("**Guidelines**"), provided that the Guidelines shall apply to all distributors. AMD shall not use the Trademarks in any manner other than expressly authorized by this Agreement. From time to time upon FASL's request, AMD shall submit to FASL samples of all AMD materials bearing the Trademarks. If FASL discovers any use of the Trademarks inconsistent with the Guidelines on any such submitted samples, and delivers to AMD a writing describing in reasonable detail the improper use, AMD shall promptly cease or remedy such use.

6.5 Documentation. Subject to the terms and conditions of this Agreement, FASL grants to AMD a non-exclusive, royalty-free, fully paid up license (including the right to grant sublicenses), during the Term, to use, display, translate, modify to make consistent with in its own documentation, copy and otherwise reproduce and distribute (either on its own, or in conjunction with, or as incorporated in AMD product documentation) the Documentation in the AMD Territory and the Joint Territory, and anywhere in the world in connection with **** and AMD ****, solely in connection with the marketing, promotion, advertisement, sale and other distribution of Products as expressly permitted herein, and in connection with AMD's obligations set forth in Sections 5, 9 and 11. Notwithstanding the foregoing, AMD may not modify the Documentation in a manner that misrepresents the Products.

7. PRODUCT DISTRIBUTION CENTERS

7.1 Product Distribution Centers. AMD will set aside physical space reasonably acceptable to FASL in one of the storage or warehouse facilities it owns or leases in Europe for FASL to use as a storage and shipping facility for Products (the "Product Distribution Center"). The size of space allocated to FASL for the Product Distribution Center shall be agreed upon by the Parties in writing. To the extent feasible, AMD shall maintain the Product Distribution Center apart from the space allocated for AMD activities. The Product Distribution Center will be staffed by FASL employees or agents, or by FASL Subsidiary employees or agents, who shall be granted unlimited access to the Product Distribution Center, but who shall be under the general administrative supervision of AMD for site management at the applicable facility. Notwithstanding anything to the contrary in the foregoing, FASL and FASL Subsidiary employees and agents shall, and FASL or a FASL Subsidiary, as applicable, shall cause it employees and agents to: (a) not interfere with AMD's activities at the AMD facilities housing the Product Distribution Center; (b) comply with AMD's then-current workplace rules and procedures, as provided by AMD to FASL from time to time; and (c) take such other action or follow such other procedures as reasonably requested by AMD. FASL shall retain title and risk of loss with respect to Products stored in Product Distribution Center, and, as between the Parties, title and risk of loss shall pass to AMD only in accordance with Section 3.5.2. The Parties currently anticipate that it will not be possible to establish the Product Distribution Center on or before the Effective Date; the Parties will use Best Efforts to establish the Product Distribution Center as soon as possible after the Effective Date, but in any event will do so no later than January 1, 2004.

7.2 Product Distribution Center Operating Costs. AMD shall provide use of Product Distribution Center space at no cost to FASL, and AMD will bear all general maintenance costs and expenses incurred in connection with the Product Distribution Center, including, for example, rental payments, utilities, and security and safety expenses. Notwithstanding anything to the contrary in the foregoing, AMD shall not be responsible for any costs or expenses relating to FASL's or the FASL Subsidiary's operation of the Product Distribution Center, including costs relating to the FASL or FASL Subsidiary employees and/or agents working in the Product

Distribution Center, and administrative expenses incurred by FASL or a FASL Subsidiary in connection with maintaining and tracking Product inventory and packaging and shipping Products.

7.3 Consignment Warehouses. Upon the agreement of the Parties, and without limiting Section 2.3.4, AMD may maintain an agreed level of Product inventory in one or more of its consignment warehouses. Title and risk of loss with respect to such inventory shall remain with FASL until such time that AMD places a Purchase Order for the relevant Products in accordance with Section 3.1; *provided, however*, that with respect to Products maintained at AMD's consignment warehouse in ****, title and risk of loss shall pass to AMD upon shipment of such Products from a FASL facility or the Product Distribution Center, and in accordance with Section 3.5. Any such inventory shall be maintained by AMD employees and at no cost to FASL. FASL will bear shipping costs for shipping Products to a consignment warehouse; AMD will bear shipping costs for shipping Products from a consignment warehouse. AMD will report on the amount and status of any such inventory from time-to-time as reasonably requested by FASL. Without limiting the foregoing, AMD agrees to use Best Efforts to provide FASL as soon as it may be practicable daily point-of-sales reports in a format and including the information reasonably designated by FASL regarding all such inventory on a consignment warehouse-by-consignment warehouse basis, providing the same types of information as specified in Schedule 7.3. Payments for Products held by AMD in accordance with this Section 7.3 shall be made within sixty (60) days from the date of shipment of such Products to the applicable Customer or Channel Partner. An initial list of consignment warehouses is set forth in Schedule 7.3; AMD will update such list by reasonable form of notice to FASL if it adds a consignment warehouse location or ceases to use an existing location as a consignment warehouse.

8. VENDOR MANAGED INVENTORY PROGRAMS

The Parties may institute "vendor managed inventory programs," operated through either Product Distribution Centers or via one or more third parties, on terms and conditions to be agreed in writing in advance by FASL and AMD.

9. CUSTOMER SUPPORT RESPONSIBILITIES

9.1 ****. AMD will maintain a **** in order to better enable AMD ****. AMD will provide FASL with ****, to better enable FASL ****. FASL shall have no right to use, and shall not use, any ****. Information obtained by FASL from AMD with regard to AMD's independent sales activities, Product pricing or allocation decisions shall be subject to the obligations set forth in Section 16, and shall not be disclosed to Fujitsu or to any other Entity or person, except as otherwise expressly permitted hereunder.

9.2 **Post-Sale Applications Support.** AMD and FASL will provide reasonable field applications support to Customers that are designing in Products. Upon FASL's reasonable request, AMD shall dedicate a reasonable number of FAEs to any region in the Joint Territory, on terms and conditions to be agreed in writing by the Parties, *provided* that AMD reasonably determines that substantial sales revenues for AMD may be generated from such region.

9.3 Warranty, Field Support. AMD will reasonably assist FASL and Customers in connection with FASL's compliance with and fulfillment of its warranty policies and, specifically, with respect to the following FASL processes: Return Material Authorizations (RMAs); Customer Corrective Action Requests (CCARs); and Advanced Change Notifications (ACNs). **** written notification to AMD, and AMD will assist FASL in accordance with the revised processes, *provided* that **** would require AMD to incur significant additional costs or compliance burdens, unless AMD consents thereto in writing, such consent not to be unreasonably conditioned, delayed or withheld.

9.4 Subdistributor Channel Design Registration. AMD will assist FASL and Customers regarding Subdistribution Channel Design Registrations on terms and conditions, and in accordance with procedures, to be agreed by the Parties.

10. CHANGES IN SPECIFICATIONS AND DESIGNS

10.1 Product Transition. FASL will initially manufacture the Products set forth on Schedule 10.1 in accordance with the specifications used for such Products immediately prior to the Effective Date, and will label and market such Products under the Product part numbers used for such Products by AMD immediately prior to the Effective Date, for a reasonable period of time as reasonably determined by FASL, taking into account various factors, including the preservation of Customer relationships and Customer demands and requirements.

10.2 Product Change or Elimination (End-of-Life). With respect to any proposed change to the specifications or designs of any Product, or to a proposed change to cease further production of a Product, FASL shall notify AMD of the proposed change in accordance with FASL's then-current standard ACN procedures, a copy of which FASL shall provide to AMD from time to time, as and when updated. FASL will then commercially release such change, or phase out production of a Product, in accordance with its then-current standard ACN procedures; *provided, however*, that FASL will take into account in the timing of the release of such change, or the timing of the phase out of the Product, as applicable, any concerns expressed to FASL by AMD or any of AMD's Channel Partners or Customers regarding the timing of such release or termination.

11. MARKETING; SALES

11.1 Global Marketing Policies and Campaign.

11.1.1 Marketing Policies. FASL will establish global policies regarding public relations and marketing, including the form and content of Product marketing and promotional materials and advertisements, such policies to be amended by FASL from time to time in its reasonable discretion. FASL shall promptly notify AMD in writing of any amendments to such policies. AMD shall comply with such policies, to the extent permitted by Applicable Law.

11.1.2 Marketing Campaign. FASL will, on an annual basis, develop a global marketing plan for Products, in consultation with AMD and Fujitsu (each, a “**Marketing Plan**”). Each Party will be responsible for performing the obligations under each Marketing Plan which such Party has agreed to in writing, and shall bear all costs and expenses it has agreed in writing to bear in connection therewith. FASL will update each Marketing Plan on an as-needed basis. ****.

11.2 **Joint Marketing.**

11.2.1 Restriction. If agreed in writing by the Parties, AMD may engage in joint marketing or promotional campaigns in which both Parties are referenced. The Parties agree and acknowledge that using FASL-produced marketing materials and the Trademarks in connection with AMD’s normal sales activities (including by modifying FASL marketing materials for incorporation into AMD’s general product marketing materials in accordance with Section 11.6.2) shall not constitute a joint marketing campaign.

11.2.2 Joint Campaign Activities and Costs. Notwithstanding Section 11.2.1, AMD may request that FASL establish and implement a joint marketing campaign. Upon such request, FASL may agree to establish such a joint marketing campaign on terms to be agreed. All costs and expenses incurred **** in connection with any such joint marketing campaign shall be borne by ****; *provided, however*, that **** shall obtain **** prior written consent before incurring any costs or expenses in connection with any such joint marketing activities that will be charged to ****.

11.2.3 FASL Support. Upon AMD’s request, FASL may, but ****, participate in AMD-led marketing activities directed at a specific Customer or group of Customers within the AMD Territory or the Joint Territory, or at any **** AMD **** Customer. FASL’s decision as to whether it will participate in such activities will take into account ****.

11.3 **Market Intelligence**. AMD will use commercially reasonable efforts to keep FASL informed of industry trends and competitive conditions that may affect the sale of Products in the AMD Territory, and will use commercially reasonable efforts to provide FASL with such information for regions in the Joint Territory to the extent AMD becomes aware of such trends or conditions.

11.4 ****; **Efforts**. AMD will **** from time to time, and will use commercially reasonable efforts to ****, in each case ****. AMD will use commercially reasonable efforts to ****.

11.5 ****.

11.5.1 Activities. AMD will engage in the following demand creation activities with Customers and identified Leads in the AMD Territory, and, to the extent commercially reasonable, with Customers and identified Leads in the Joint Territory, *provided* that such demand creation activities are consistent with the then-current ****:

-
- (a) Providing Customers and identified Leads with a reasonable number of Product samples in support of AMD design win efforts;
 - (b) Providing Customers and identified Leads with any Documentation in AMD's possession that AMD reasonably determines to be useful in support of AMD design win efforts;
 - (c) Providing a reasonable level of field applications support to Customers that are designing-in Products;
 - (d) Providing FASL with data in AMD's possession that AMD reasonably determines to be useful in connection with FASL's tracking of design wins, to the extent permitted by and in accordance with Applicable Law and subject to Section 9.1 and any duty of confidentiality that AMD owes to any third party; and
 - (e) Performing such other activities that AMD reasonably determines to be useful in connection with AMD's promotion of Products.

11.5.2 Marketing Support. FASL will, at FASL's sole cost, provide AMD with all marketing application support reasonably requested by AMD in connection with AMD's demand creation activities, including by providing AMD with a reasonable number of Product samples for use in connection with AMD's demand creation activities.

11.6 **Marketing Materials.**

11.6.1 Customization Assistance. AMD will, upon FASL's reasonable request, assist FASL with the customization of FASL's Product marketing and promotional materials for particular geographic regions within the AMD Territory and the Joint Territory and for specifically identified Lead opportunities. Any assistance that AMD provides in accordance with this Section 11.6.1 shall be at ****, *provided* that such costs are reasonably incurred.

11.6.2 Marketing Materials. FASL will be solely responsible for producing general Product marketing and promotional materials. FASL will provide AMD with a reasonable amount of such materials, including for the purpose of enabling AMD to engage in demand creation activities pursuant to Section 11.5. AMD shall have the right at its own cost to modify such materials in order to incorporate FASL marketing materials into AMD's general product marketing materials in such a manner that conforms with AMD's general marketing practices.

11.7 **Training**. AMD will train all AMD field sales personnel, sales support personnel, and field applications personnel engaged in the promotion and sale of Products, and will provide training to such personnel of its Channel Partners to the extent it reasonably determines that its Channel Partners require such training. FASL will assist AMD with such training efforts, on terms and conditions to be agreed by the Parties.

11.8 **Other Assistance.** AMD shall provide FASL with such additional sales and/or marketing support activities as FASL may reasonably request from time to time, on terms and conditions to be agreed in writing by the Parties.

12. PRICE; PAYMENTS; TAXES

12.1 **Distributor Pricing.** AMD is free to establish prices for its re-sale of Products.

12.2 **Price List.** ****, FASL shall provide AMD with an updated price list which, among other things, shall both set forth FASL's recommended sales price ("**RSP**") for each Product, **** to which such price list relates, and designate each Product as either a Standard Product or a Custom Product. FASL shall have the right to increase or reduce the RSP for any Product at any time in its sole discretion, upon prior written notice to AMD, the amount of such notice to take into account the time period necessary to communicate price changes to sales people, such written notice describing the Product subject to such price change, the new RSP for such Product and the effective date of such price change. The Parties will use Best Efforts to establish a real-time price change notification procedure, but acknowledge that on the Effective Date means to establish such a procedure have not been implemented. Price changes shall apply to all Purchase Orders received by FASL after the effective date of the change and FASL may in its discretion **** received prior to the effective date of the change. FASL will establish policies and procedures whereby FASL will honor long-term pricing commitments to AMD as agreed to by FASL.

12.3 **Purchase Price of FASL Content Only Products.** The Purchase Price for each FCO Product shall be equal to **** of RSP at the time the order was booked. The Purchase Price for each FCO Product is subject to the following adjustments:

12.3.1 **Price Increase.** In the event AMD sells an FCO Product to a Customer or Channel Partner in an amount that is in excess of the RSP for such Product, the Purchase Price shall be automatically increased to an amount equal to **** of the actual sales price of such Product.

12.3.2 **Price Decrease.** In the event AMD sells an FCO Product to a Customer or Channel Partner in an amount that is less than the RSP for such Product, AMD may request that FASL reduce the Purchase Price. In such case, FASL may, but shall have no obligation to, reduce the Purchase Price to an amount that it determines in its sole discretion.

12.4 Purchase Price for Combined Products.

12.4.1 **Purchase Price.** The Purchase Price for each Combined Product shall be as follows:

(a) for Combined Products with equal to or greater than **** FASL Content, the Purchase Price shall be equal to **** of the RSP at the time the order was booked for such Product;

(b) for Combined Products with equal to or greater than **** and less than **** FASL Content, the Purchase Price shall be equal to **** of the RSP at the time the order was booked for such Product;

(c) for Combined Products with equal to or greater than **** and less than **** FASL Content, the Purchase Price shall be equal to **** of the RSP at the time the order was booked for such Product;

(d) for Combined Products with equal to or greater than **** and less than **** FASL Content, the Purchase Price shall be equal to **** of the RSP at the time the order was booked for such Product;

(e) for Combined Products with equal to or greater than **** and less than **** FASL Content, the Purchase Price shall be equal to **** of the RSP at the time the order was booked for such Product; and

(f) for Combined Products with less than **** FASL Content, the Purchase Price shall be equal to **** of the RSP at the time the order was booked for the FASL Content *plus***** of the price that FASL paid for the non-FASL Content.

12.4.2 Price Increase. In the event AMD sells a Combined Product to a Customer or Channel Partner in an amount that is in excess of the RSP at the time the order was booked for such Product, the Purchase Price shall be automatically increased to an amount equal to the applicable percentage (as set forth in Section 12.4.1 above) of the actual sales price of such Product.

12.4.3 Price Decrease. In the event AMD sells a Combined Product to a Customer or Channel Partner in an amount that is less than the RSP at the time the order was booked for such Product, AMD may request that FASL reduce the Purchase Price. In such case, FASL may, but shall have no obligation to, reduce the Purchase Price to an amount that it determines in its sole discretion.

12.4.4 Determination of FASL Content. The percentage of FASL Content of any Combined Product shall be determined by FASL using the following formula: the RSP for such Product, *less* the standard, pre-established forecasted cost (as determined by FASL) for the non-FASL Content of such Product; the difference is then *divided by* the RSP for such Product. The formula for determining the percentage of FASL content for Combined Products is illustrated immediately below.

$$\frac{(\text{Product RSP}) - (\text{Price paid by FASL for non-FASL Content})}{}$$
$$(\text{Product RSP})$$

12.4.5 Content Review; Breakdown. FASL shall, on a Quarterly basis, review the percentage of FASL Content for each Combined Product, and shall make adjustments to the

Purchase Price for Combined Product(s), as required based on such review. For each Combined Product, FASL shall provide AMD with a detailed cost breakdown of the non-FASL Content that was used in determining the percentage of FASL Content for such Product.

12.5 Payments Terms. FASL shall issue and deliver an invoice to AMD for any amount payable to FASL pursuant to this Agreement. Unless otherwise agreed by the Parties, payments for Products delivered in accordance with Section 2.3.3, and any other payments required hereunder, including pursuant Section 11.2.2, shall be made within **** from the date on which FASL **** relating to such payment obligation. In no event shall FASL deliver an invoice before shipping the Products (or, in the event of joint marketing costs payable in accordance with Section 11.2.2, incurring the costs) to which such invoice relates. If the end of the payment period falls on a non-business day of AMD, payment may be made on the following business day. All amounts payable by AMD to FASL shall be paid by wire transfer of U.S. Dollars in immediately available funds to such financial institution and account number as FASL may designate in writing to AMD. In the event that the purchase price at which AMD sells a Product to a Customer or Channel Partner is ****, AMD may so notify FASL ****, *provided* that in such case FASL shall ****.

12.6 Currency. All RSPs shall be quoted in U.S. Dollars.

12.7 Late Payments. If AMD fails to make any payment on or before the required payment date, AMD shall be liable for interest on such payment at the rate of **** per annum or the maximum amount allowed by Applicable Law, whichever is less.

12.8 Taxes. All amounts payable for Product sold by FASL to AMD hereunder are exclusive of any taxes. AMD shall reimburse FASL only for the following tax payments with respect to the sale of Product under this Agreement unless an exemption applies: state and local use taxes arising in the United States of America, value added taxes or other similar taxes on turnover (“VAT”) arising in relevant jurisdictions imposing VAT and consumption taxes arising in Japan. FASL shall cause all such amounts reimbursed by AMD to be paid to the appropriate Governmental Authorities as required by Applicable Law. If FASL is required by law to charge use, consumption, VAT or similar taxes to AMD, FASL will ensure its invoices are in proper form to enable AMD to claim VAT or other applicable deductions, if AMD is permitted by law to do so. In the event that AMD is required by Applicable Law to make any deduction or to withhold any amount from any sum payable by AMD to FASL hereunder, (a) AMD will remit such amounts to the appropriate Governmental Authorities and promptly furnish FASL with original tax receipts evidencing the payment of such amounts, and (b) the sum payable by AMD upon which the deduction or withholding is based will be decreased accordingly.

13. QUARTERLY BUSINESS REVIEW

13.1 Meetings. AMD and FASL will meet once each Quarter, at a time and place to be agreed by the Parties. The Parties may attend these meetings in person, by telephone or via videoconference. Each Party will bear its own costs and expenses incurred in connection with attending such meetings. AMD and FASL may hold such meetings jointly **** and/or any other distributor or sales representative appointed by FASL in accordance with Section 2.2 or 14, as FASL reasonably determines is appropriate and subject to Sections 13.2 and 13.3.

13.2 Meeting Topics. At these Quarterly meetings, the Parties will, among other things: (a) review the status and overall effectiveness of FASL's marketing activities and, if applicable, the status and overall effectiveness of FASL-AMD joint marketing activities undertaken in accordance with Section 11.2.2; (b) discuss potential Leads and actual or potential Customer support issues; (c) discuss Customer and Channel Partner input and feedback regarding Products or proposed FASL new product offerings; (d) evaluate the general effectiveness of AMD's marketing activities in relation to FASL's then-current Marketing Plan; (e) evaluate the performance of AMD's Channel Partners; and (f) discuss other issues and concerns raised by the Parties. In no event will joint meetings in which FASL and two or more distributors or sales representatives participate (including AMD and Fujitsu), contain a discussion of any distributor's independent sales activities, Product pricing or allocation decisions. Information obtained by FASL from AMD with regard to AMD's independent sales activities, Product pricing or allocation shall be subject to the obligations set forth in Section 16, and shall not be disclosed to Fujitsu or to any other Entity or person, except as otherwise expressly permitted hereunder, including without limitation as permitted under Section 9.1.

13.3 Not Corrective Action. The Parties acknowledge and agree that (a) these quarterly meetings will not be used as a forum in which to institute the commencement of corrective action procedures against AMD in the event that FASL believes that AMD's sales performance is unsatisfactory, and (b) FASL may only take corrective action against AMD on the basis of the factors, and in accordance with the procedures, set forth in Section 14 below.

14. DISTRIBUTOR CORRECTIVE ACTION

14.1 Initiation of Process. In the event that FASL reasonably determines that AMD's sales performance (including as such performance may be affected by the sales performance of its Channel Partners), with respect to a Customer (or multiple Customers) in the AMD Territory, or with respect to an AMD Account or an AMD PRC Customer, is not satisfactory based on:

14.1.1 AMD's actual market share (by dollar and product line) versus FASL's market share goals, as set forth in FASL's then-current Marketing Plan, taking into account current market conditions;

14.1.2 Revenue levels forecasted by FASL in its then-current six-quarter operating plan, and AMD's substantial variance from such forecasted revenues, taking into account current market conditions;

14.1.3 AMD's level of design win activity, measured against FASL's reasonable opinion of the appropriate level of activity based on current market conditions; or

14.1.4 Reductions in the level of AMD sales coverage, measured against FASL's reasonable opinion of the appropriate level of sales coverage based on current market conditions; then FASL shall have the right to institute the procedures regarding AMD corrective action set forth in Section 14.2 below.

14.2 Process.

14.2.1 Initial Notice; Corrective Action Plan. In the event FASL determines that AMD's performance is not satisfactory on the basis of the factors set forth in Section 14.1, FASL may provide written notice to AMD indicating (a) that it believes that AMD's performance is unsatisfactory, (b) in reasonable detail the nature and the basis of such determination, and (c) that AMD should submit to FASL a corrective action plan setting forth the actions that AMD proposes to take to remedy such performance ("Action Plan"). AMD shall have thirty (30) days from its receipt of such notice in which to respond to FASL, either disputing FASL's characterization of its performance as unsatisfactory or delivering to FASL an Action Plan. In the event that AMD disputes FASL's characterization of its performance, the Parties shall meet and discuss the matter in good faith.

14.2.2 Acceptance of Action Plan. In the event AMD submits an Action Plan to FASL in accordance with Section 14.2.1, and FASL reasonably determines that AMD's Action Plan will remedy AMD's performance, FASL shall notify AMD in writing that the Action Plan is acceptable and AMD shall promptly implement such Action Plan. If, however, FASL reasonably determines that such Action Plan does not address its concerns, the Parties shall promptly meet and shall use Best Efforts to agree upon a mutually acceptable Action Plan in good faith.

14.2.3 Evaluation. FASL will evaluate AMD's performance against the agreed Action Plan over the succeeding two (2) Quarters, unless an alternative time period is agreed in writing by the Parties and set forth in the Action Plan.

14.2.4 Failure to Improve; Proposal of Measures. In the event FASL reasonably determines both that AMD has failed to properly execute the Action Plan and that AMD's performance otherwise remains unsatisfactory on the basis of the factors set forth in Section 14.1, FASL shall provide written notice to AMD (with a copy to the FASL Board) (a) indicating that it believes that AMD has failed to properly implement the Action Plan, (b) indicating that it believes that AMD's performance remains unsatisfactory (and describing in reasonable detail the nature and basis of such belief), and (c) listing the measures that FASL proposes to take against AMD in accordance with Section 14.3 in order to remedy the identified performance issues. AMD shall have thirty (30) days from its receipt of such notice in which to dispute FASL's determination to the FASL Board, in which case FASL shall not have the right to implement its proposed measures unless and until the FASL Board approves such measures. In the event AMD does not dispute such notice to the FASL Board, FASL shall have the right to implement the proposed measures.

14.2.5 Right to Arbitrate. In the event that the FASL Board approves FASL's proposed measures, and AMD believes that such measures are inappropriate, AMD shall have the right to institute dispute resolution proceedings in accordance with Section 21.3.

14.3 **Actions.** In the event that FASL delivers a written notice to AMD pursuant to Section 14.2.4 proposing remedial measures, FASL may implement the following measures (in the following order of priority), *provided* that the FASL Board has approved such measures in accordance with Section 14.2.4 and subject to AMD's right to arbitrate pursuant to Section 14.2.5 and the resolution of any such arbitration:

14.3.1 Appointment of a Supplementary Distributor.

(a) In the event that AMD is underserving a Customer in the AMD Territory, FASL may grant to Fujitsu or another distributor the right to market, sell and distribute to such Customer in the specific geographical territory(ies) in which such Customer is being underserved.

(b) In the event that AMD is underserving an AMD Account, FASL may grant Fujitsu or another distributor the right to market, sell and distribute to such AMD Account in the specific geographical territory(ies) in which such AMD Account is being underserved.

(c) In the event that AMD is underserving an AMD PRC Customer, FASL may grant Fujitsu or another distributor the right to market, sell and distribute to such AMD PRC Customer.

14.3.2 Appointment of Supplementary Distributor within a Region within a Territory. In the event that AMD is persistently underserving multiple Customers in a region within the AMD Territory, FASL may grant Fujitsu or another distributor the right to market, sell and distribute in the specific geographical territory(ies) in which such Customers are being underserved, *provided* that FASL has previously provided AMD with written notice with respect to each such underserved Customer and further written notice regarding the performance issues within the region identified by FASL, in accordance with Section 14.2 above. In determining the boundaries of the region as to which FASL may grant such right to market, sell and distribute, the smallest possible boundary within which the underserved Customers are located will be drawn.

14.3.3 Appointment of a Supplementary Distributor within a Territory. In the event that AMD is persistently underserving multiple Customers throughout the AMD Territory, FASL may grant Fujitsu or another distributor the right to market, sell and distribute Products in the AMD Territory, *provided* that FASL has previously provided AMD with written notice with respect to each such underserved Customer and further written notice regarding the performance issues within the AMD Territory identified by FASL in accordance with Section 14.2 above.

14.3.4 Minimal Impact Requirement. However, in all cases, FASL shall only propose measures to the extent they are reasonably necessary to provide FASL with the opportunity to have sales made to the underserved Customer(s) or in such underserved region or territory, and in a manner that has the minimal effect on AMD's distribution rights.

15. WARRANTIES

15.1 **FASL Product Warranty.** FASL represents and warrants to AMD that the Products shall operate in accordance with the Documentation and other written specifications therefor, and shall be free from defects in functionality, materials and workmanship, for a period of twelve (12) months from the date that such Products **** in accordance with Section 3 (the “**Warranty Period**”).

15.2 **Remedies.** In the event that AMD notifies FASL during the applicable Warranty Period that any Product does not conform to the warranty provisions set forth in Section 15.1, FASL shall, at FASL’s option, **** in accordance with the Product return and problem verification procedures **** (b) **** such **** at **** or (c) provide **** for such defective Product. FASL shall **** in connection with **** defective Products.

15.3 **No Warranty Pass Through.** AMD shall have the right to independently make Product warranties to Customers and Channel Partners consistent with the Product warranty made by FASL under this Agreement. AMD hereby indemnifies and holds FASL harmless from and against any liabilities, losses, damages, costs and expenses, including attorneys’ fees and costs, incurred by FASL resulting from any claims based on or related to any representation or warranty made by AMD regarding the Products that is inconsistent with the warranty made by FASL hereunder.

15.4 **Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES (AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS) ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

16. CONFIDENTIAL INFORMATION

16.1 **Obligations.** The Parties acknowledge and agree that all proprietary or nonpublic information disclosed by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) in connection with this Agreement, directly or indirectly, which information is (a) marked as “proprietary” or “confidential” or, if disclosed orally, is designated as confidential or proprietary at the time of disclosure and reduced in writing or other tangible (including electronic) form that includes a prominent confidentiality notice and delivered to the Receiving Party within thirty (30) days of disclosure, or (b) provided under circumstances reasonably indicating that it constitutes confidential and proprietary information, constitutes the confidential and proprietary information of the Disclosing Party (“**Confidential Information**”). The Receiving Party may disclose Confidential Information only to those employees who have a need to know such Confidential Information and who are bound to retain the confidentiality thereof under provisions (including provisions relating to nonuse and nondisclosure) no less restrictive than those required by the Receiving Party for its own confidential information. The Receiving Party shall, and shall cause its employees to, retain in confidence and not disclose to

any third party (including any of its sub-contractors) any Confidential Information without the Disclosing Party's express prior written consent, and the Receiving Party shall not use such Confidential Information except to exercise the rights and perform its obligations under this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same procedures and degree of care which it uses to protect its own confidential information of like importance, and in no event less than reasonable care. The Receiving Party shall be fully responsible for compliance by its employees with the foregoing, and any act or omission of an employee of the Receiving Party shall constitute an act or omission of the Receiving Party. The confidentiality obligations set forth in this Section 16.1 shall apply and continue, with regard to all Confidential Information disclosed hereunder, during the Term (as hereinafter defined) and for a period of five (5) years from the date of termination of this Agreement.

16.2 Exceptions. Notwithstanding the foregoing, Confidential Information will not include information that: (a) was already known by the Receiving Party, other than under an obligation of confidentiality to the Disclosing Party or any third party, at the time of disclosure hereunder, as evidenced by the Receiving Party's tangible (including written or electronic) records in existence at such time; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party hereunder; (c) became generally available to the public or otherwise part of the public domain after its disclosure other than through any act or omission of the Receiving Party in breach of this Agreement; (d) was subsequently lawfully disclosed to the Receiving Party by an Entity or person other than the Disclosing Party not subject to any duty of confidentiality with respect thereto; or (e) was developed by the Receiving Party without reference to any Confidential Information disclosed by the Disclosing Party, as evidenced by the Receiving Party's tangible (including written or electronic) records in existence at such time.

16.3 Confidentiality of Agreement; Publicity. Each Party agrees that the terms and conditions of this Agreement shall be treated as Confidential Information and that no reference shall be made thereto without the prior written consent of the other Party (which consent shall not be unreasonably withheld) except (a) as required by Applicable Law, *provided* that in the case of any filing with a Governmental Authority that would result in public disclosure of the terms hereof, the Parties shall mutually cooperate to limit the scope of public disclosure to the greatest extent possible, (b) to its accountants, banks, financing sources, lawyers and other professional advisors, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, (c) in connection with the enforcement of this Agreement, or (d) pursuant to agreed joint press releases prepared in good faith. The Parties will consult with each other, in advance, with regard to the terms of all proposed press releases, public announcements and other public statements with respect to the transactions contemplated hereby.

17. CONSEQUENTIAL DAMAGES WAIVER

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, OR ANY THIRD PARTY CLAIMING THROUGH OR UNDER SUCH PARTY, UNDER ANY LEGAL THEORY, FOR

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

ANY COSTS (INCLUDING WITHOUT LIMITATION LABOR COSTS) FOR IN-THE-FIELD INSTALLATION OR REPAIR WORK, OR FOR OTHER SIMILAR REWORK COSTS, OR FOR ANY LOSS OF PROFITS, REVENUES OR GOODWILL, LOSS OF DATA, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING PROVISIONS OF THIS SECTION 17 SHALL NOT BE DEEMED TO LIMIT FASL'S INDEMNITY OBLIGATIONS UNDER SECTION 19.

18. LIMITATION OF LIABILITY

EXCEPT WITH RESPECT TO FASL'S INDEMNITY OBLIGATIONS UNDER SECTION 19, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR CLAIMS RELATING TO THIS AGREEMENT, WHETHER FOR BREACH, NEGLIGENCE, INFRINGEMENT, IN TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL AMOUNTS PAID OR PAYABLE BY AMD TO FASL IN THE MOST RECENT FULL CALENDAR YEAR PRECEDING EITHER PARTY'S INITIAL NOTICE TO THE OTHER PARTY OF ANY CLAIM OR POTENTIAL CLAIM HEREUNDER.

19. FASL INDEMNITY

19.1 Indemnity. FASL shall at its own expense defend AMD from and against any (a) third party action to the extent that it relates to or results from any defects of Products delivered by or for FASL that directly result in the death or bodily injury to any person or that result in damage to real or personal property, or (b) any third party claim, action or proceeding to the extent that it relates to or results from the Products allegedly infringing, violating or misappropriating any Intellectual Property Right of any third party (collectively, clauses (a) and (b) constitute "Claims"). For purposes of this Section 19, the term Intellectual Property Rights shall be limited to patents, copyrights, mask work rights, trade secrets and Trademarks; *provided, however*, that for purposes of this Section 19, the term Trademarks shall be limited to those Trademarks where FASL (or its subcontractors or agents), and not AMD or Fujitsu, has performed the research and registration work to validate the availability of the Trademark in the applicable jurisdictions. FASL agrees to indemnify AMD and hold it harmless from and against any damages, costs and expenses (including without limitation any reasonable attorneys' fees and costs) finally awarded against AMD by a court of competent jurisdiction that may result from any such Claim; provided that (i) AMD notifies FASL promptly in writing of the Claim; (ii) FASL has sole control of the defense and all related settlement negotiations; and (iii) AMD provides FASL, at FASL's expense, with all reasonable assistance, information, and authority to perform these duties. Any delay by AMD in notifying FASL of a Claim shall not relieve FASL of its obligations under this Section 19, except to the extent (and only to the extent) that FASL's ability to defend such Claim is materially prejudiced by such delay.

19.2 **Exclusions.** FASL shall have no liability for any Claim of infringement or liability based on or arising from (i) modification of the Products by AMD or any third party (unless such modification was specifically authorized or required by FASL and such authorization was delivered by an authorized FASL employee in the form of a detailed written requirements document listing in detail the specifications for the modification), to the extent the infringement or liability would have been avoided by use of the unmodified Products; or (ii) the combination or use of the Products furnished hereunder with materials or technology not furnished by FASL, to the extent such infringement or liability would have been avoided by use of the Products alone.

19.3 **Alternatives.** In the event the Products are held to, or FASL believes are likely to be held to, infringe, violate or misappropriate any Intellectual Property Right of any third party, FASL shall have the right at its sole option and expense to (i) substitute or modify the Products so that they are non-infringing, while retaining substantially equivalent features and functionality as set forth in the specifications and documentation; or (ii) obtain for AMD a license to continue offering the Products; or (iii) if (i) and (ii) are not reasonably practicable as determined by FASL, terminate further sales of the infringing Product.

19.4 **Limit on Liability.** In no event shall FASL's liability for (i) Claims relating to infringement, violation or misappropriation of third party Intellectual Property Rights, or (ii) Claims for loss of data exceed the amounts paid to AMD or its Affiliates by their respective Customers or Channel Partners for the affected Products.

19.5 **Sole Obligation.** The foregoing FASL indemnities state the sole obligation and exclusive liability of FASL to AMD, and AMD's sole recourse and remedy against FASL for any Claim of infringement or misappropriation of an Intellectual Property Right by the Products or for any Claim of product liability related to the Products.

20. TERM AND TERMINATION

20.1 **Term.** This Agreement will be effective as of the Effective Date, and will continue in full force and effect indefinitely, unless terminated as set forth in this Section 20 ("**Term**").

20.2 **Termination upon Mutual Agreement.** The Parties may terminate this Agreement upon mutual written consent at any time.

20.3 **Termination for Breach.** In the event that either Party materially defaults in the performance of a material obligation under this Agreement, then the non-defaulting Party may provide written notice to the defaulting Party indicating: (a) the nature and basis of such default with reference to the applicable provisions of this Agreement; and (b) the non-defaulting Party's intention to terminate this Agreement. Upon receipt of such notice, the defaulting Party shall use Best Efforts to cure the alleged breach in a timely manner, and the Parties shall meet to discuss

the matter. If the breach has not been cured to the reasonable satisfaction of the non-defaulting Party within a reasonable period of time of not less than one hundred twenty (120) days, and if the Parties are not otherwise able to resolve the matter, then the non-defaulting Party may terminate this Agreement upon written notice.

20.4 Termination for Reduction in Ownership. In the event that AMD's Ownership Interest is less than ten percent (10%), FASL shall have the right to terminate this Agreement immediately by giving ninety (90) days' written notice of termination to AMD.

20.5 Cross-Termination. Unless otherwise expressly agreed in writing by the Parties, this Agreement shall automatically terminate upon the termination of the LLC Operating Agreement.

20.6 Effect of Termination.

20.6.1 Return of Confidential Information.

(a) AMD shall promptly return to FASL (or destroy, at FASL's election) all Documentation and FASL Confidential Information then in the possession or under AMD's control, and FASL shall promptly return to AMD (or destroy, at AMD's election) all AMD Confidential Information then in the possession or under FASL's control, excluding historical point-of-sale reports and other historical information provided to FASL pursuant to Section 9.1 above. Notwithstanding the foregoing, (i) any AMD historical pricing information may only be retained by FASL for financial reporting and other similar reporting and audit purposes but may not be supplied to any other distributor, sales representative or the like; (ii) FASL shall not retain any information provided to AMD or its Affiliates by any of their respective Customers or Channel Partners and marked specifically as Customer confidential information or Channel Partner confidential information, as applicable, unless such Customers or Channel Partners have agreed in writing to permit FASL to retain such information; and (iii) FASL may retain any AMD information relating to current proposals, price quotations or commitment, but FASL shall not supply any such information to any other distributor, sales representative or the like.

(b) Notwithstanding subsection (a) above, the Receiving Party shall not be liable to the Disclosing Party for the inadvertent use of the Disclosing Party's Residual Information for the Receiving Party's own business purposes by the Receiving Party's personnel who no longer have access to any tangible (including machine-readable) embodiments of any Confidential Information of the Disclosing Party; *provided, however*, that the foregoing shall not release or excuse the Receiving Party from any liability to the Disclosing Party for any disclosure of the Disclosing Party's Confidential Information by the Receiving Party to any other persons or Entities, including the Receiving Party's former personnel, or any use of such Confidential Information by such other persons or Entities. This subsection (b) shall not be deemed to (A) grant to the Receiving Party a license under any Intellectual Property Rights (excluding trade secrets) of the Disclosing Party or (B) authorize any use of the tangible (including machine-

readable) embodiments of any Confidential Information of the Disclosing Party. For purposes hereof, “**Residual Information**” means with respect to Confidential Information, information in non-tangible form which may be incidentally retained in the unaided memory of the Receiving Party’s personnel having had access to the Confidential Information of the Disclosing Party, and which such personnel cannot identify as Confidential Information of the Disclosing Party. Such personnel’s memory is “unaided” if the personnel have not intentionally memorized any Confidential Information of the Disclosing Party.

20.6.2 Limitation of Liability. Neither FASL nor AMD shall be liable to the other, because of such termination, for compensation, reimbursement or damages: (i) for the loss of prospective profits, anticipated sales or goodwill; (ii) on account of any expenditures, investments or commitments made by either; or (iii) for any other reason whatsoever based upon the result of such termination.

20.6.3 Continuing Liability. The termination of this Agreement for any reason shall not release either Party from any liability, obligation or agreement which has already accrued at the time of termination. Termination of this Agreement for any reason shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages or otherwise, which a Party may have hereunder, at law or otherwise, or which may arise out of or in connection with such termination.

20.6.4 Outstanding Purchase Order Fulfillment. FASL shall complete all Purchase Orders that have been previously accepted by FASL and not specifically cancelled upon termination by AMD, and shall accept and fulfill any Purchase Orders issued by AMD for a period of ninety (90) days after termination of this Agreement, *provided* that the reason for termination was not a failure by AMD to pay amounts previously due to FASL under this Agreement; *provided, further*, that all inventories held by or on behalf of AMD and its Channel Partners shall be depleted by the end of such 90-day period. During such period, AMD shall have no guaranteed allocation and FASL may freely appoint additional distributors in the AMD Territory and the Joint Territory, and with respect to Global Accounts, AMD Accounts, AMD Affiliates and AMD PRC Customers, unless otherwise restricted pursuant to the terms of the Fujitsu Distribution Agreement.

20.6.5 Payment Obligation. AMD shall pay for all Products previously delivered by FASL and all Products subsequently delivered by FASL pursuant to the Purchase Orders referred to in Section 20.6.4.

20.6.6 Trademark and Documentation Licenses. All licenses relating to Trademarks and Documentation shall terminate, *provided, however*, that AMD shall have the right to continue to use Trademarks and Documentation, in a manner consistent with Section 6, in connection with the sale of Products in accordance with Section 20.6.4.

20.6.7 Transition Accounts. If this Agreement terminates at any time prior to transition of the AMD Transitional Support Customers to Fujitsu pursuant to Section 2.1, then FASL may elect to transition such AMD Transitional Support Customers effective upon the

termination date either to be supported by FASL or by any other distributor that FASL may choose, regardless of the time periods or other requirements that may be set forth in Section 2.1 above. Unless termination resulted from a material breach by FASL, then AMD agrees to use Best Efforts to facilitate the transition of customers to Fujitsu.

20.7 **Survival.** The provisions of Sections 3 (for purposes of fulfilling the terms of Section 20.6.4), 12, 15, 16 (in accordance with its terms), 17, 18, 19, 20.6, 20.7 and Section 21 shall survive any termination of this Agreement.

21. MISCELLANEOUS TERMS

21.1 **Relationship of the Parties.** In the exercise of their respective rights, and the performance of their respective obligations hereunder, the Parties are, and will remain independent contractors. Nothing in this Agreement will be construed to constitute the Parties as partners, or principal and agent for any purpose whatsoever. Neither Party will bind, or attempt to bind, the other Party hereto to any contract or other obligation, and neither Party will represent to any third party that it is authorized to act on behalf of the other Party to this Agreement.

21.2 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction and without regard to the United Nations Convention on Contracts for the International Sale of Goods).

21.3 **Dispute Resolution.** Any dispute arising under or relating to this Agreement shall be resolved in accordance with the dispute resolution procedures set forth in the LLC Operating Agreement, which procedures are incorporated herein and deemed to apply *mutatis mutandis* to the Parties.

21.4 **Language.** This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

21.5 **Successors and Assigns.** Except as expressly provided herein, the rights and obligations hereunder may not be assigned or delegated by either Party without the prior written consent of the other Party; *provided, however*, that AMD shall have the right to assign this Agreement in connection with the sale of substantially all of its business to which the Products relate. Any purported assignment, sale, transfer, delegation or other disposition of such rights or obligations by either Party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

21.6 **Entire Agreement; Amendment.** This Agreement (including the Schedules and Exhibits hereto) and the other Transaction Documents constitute the full and entire

understanding and agreement between the Parties with regard to the subject matter hereof, and supercede any prior communications, representations, understandings and agreements, either oral or written, between the Parties with respect to such subject matter. This Agreement may not be altered except by a written instrument signed by authorized legal representatives of both Parties and Fujitsu. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

21.7 Notices and Other Communications. All notices required or permitted under this Agreement shall reference this Agreement and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as follows:

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

If to FASL:

FASL LLC
One AMD Place M/S 150
P.O. Box 3453
Sunnyvale, CA 94086
Attention: General Counsel
Telephone: (408) 749-2400
Facsimile: (408) 774-7399

If to AMD:
Advanced MicroDevices, Inc.
One AMD Place M/S 150
P.O. Box 3453
Sunnyvale, CA 94086
Attention: General Counsel
Telephone: (408) 749-2400
Facsimile: (408) 774-7399

or to such other address or facsimile number as a Party may have specified to the other Party in writing delivered in accordance with this Section 21.7.

21.8 Expenses. Except as otherwise expressly set forth in this Agreement, each Party will bear its own costs and expenses, including fees and expenses of legal counsel and other representatives used or hired in connection with the transactions described in this Agreement.

21.9 Force Majeure.

21.9.1 Excuse. Neither Party will be liable to the other for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including acts of any governmental body, war, terrorism, insurrection, sabotage, embargo, fire, flood, earthquake, strike or other labor disturbance, interruption of or delay in transportation, or unavailability of or interruption or delay in telecommunications or third party services ("**Force Majeure**"); *provided, however*, that (a) a lack of credit, funds or financing, or (b) strikes or other labor disturbances that are limited to FASL's employees shall not constitute Force Majeure. This Section 21.9.1 shall not be interpreted as relieving a Party of an obligation to pay, but may serve to excuse delay in making a payment when due.

21.9.2 Mitigation. A Party seeking to be excused from performance as the result of Force Majeure will be excused to the extent such performance is delayed or prevented by Force Majeure, *provided* that such Party shall use the utmost reasonably practicable efforts to complete such performance. Each Party agrees to resume performance with the utmost dispatch whenever the causes of such excuse are cured or remedied.

21.9.3 **Notice.** Should any Party be prevented from or delayed in or become aware that it is likely to be prevented from or delayed in carrying out its obligations under this Agreement due to Force Majeure, such Party shall promptly give to the other Party a written notice setting forth the details of such Force Majeure.

21.10 **Severability.** If any provision in this Agreement will be found or be held to be invalid or unenforceable, then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will use their respective Best Efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects the Parties' intent in entering into this Agreement.

21.11 **No Third Party Beneficiaries.** The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors and permitted assigns, and the Parties do not intend to confer third party beneficiary rights upon any other Entity or person.

21.12 **Construction.** This Agreement shall be deemed to have been drafted by both Parties and, in the event of a dispute, no Party hereto shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

21.13 **Execution.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first above written.

FASL LLC:

By: _____ /s/ Thomas M. McCoy

Name: Thomas M. McCoy

Title: Manager

ADVANCED MICRO DEVICES, INC.:

By: _____ /s/ Thomas M. McCoy

Name: Thomas M. McCoy

Title: Senior Vice President, General Counsel

SCHEDULE 1.2.5

AMD PRC CUSTOMERS

A. As of the Effective Date, the “AMD PRC Customers” are:

B. In addition, “AMD PRC Customers” shall include any Entity or person in the PRC that AMD can demonstrate to FASL meets at least one of the following criteria:

1. Entities or persons doing business in the PRC but which are headquartered in the AMD Territory.

2. Entities or persons doing business in the PRC the ownership interest of which is held (i) by one or more PRC Entities or persons and (ii) **** or more by an Entity or person headquartered in the AMD Territory.

3. Entities or persons doing business in the PRC the ownership interest of which is held by (i) an Entity or person headquartered in the AMD Territory, (ii) an Entity or person headquartered in the Fujitsu Territory and (iii) one or more PRC Entities or persons, *provided* that the Entity or person headquartered in the AMD Territory owns the larger ownership interest as between (i) and (ii); *provided, further*, that the ownership interest of the Entity or person headquartered in the AMD Territory is equal to or greater than ****.

4. Entities or persons doing business in the PRC the ownership interest of which is held by (i) an Entity or person headquartered in the Joint Territory, (ii) an Entity or person headquartered in the AMD Territory and (iii) one or more PRC Entities or persons, *provided* that the Entity or person headquartered in the AMD Territory owns the larger ownership interest as between (i) and (ii); *provided, further*, that the ownership interest of the Entity or person headquartered in the AMD Territory is equal to or greater than ****.

Upon AMD’s making such demonstration to FASL, FASL shall promptly notify Fujitsu in writing (with a copy to AMD) that such Customer constitutes an AMD PRC Customer, after which time AMD shall have the exclusive right to market (except with respect to FASL), sell and otherwise distribute Products in the PRC to such Customer.

C. Notwithstanding the foregoing, AMD acknowledges that, in the event that any Entity or person becomes an AMD PRC Customer following the Effective Date, Fujitsu shall have the right to sell and otherwise distribute Products to such AMD PRC Customer to the extent, but only to the extent, that Fujitsu has a written agreement or other commitment for the purchase and sale of Products at the time that any such Customer is deemed to constitute an AMD PRC Customer in accordance with this Schedule 1.2.5, but only to the extent that failing to sell or so distribute would constitute a breach of such agreement or commitment; *provided*, that FASL shall use Best Efforts to require Fujitsu to transition sales support for such AMD PRC Customer to AMD as soon as reasonably practicable.

SCHEDULE 1.2.11

CHANNEL PARTNERS

REGION

DISTRIBUTOR

TERRITORY

** Channel Partners and representatives shall have rights consistent with the terms of this Agreement.

1

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

SCHEDULE 1.2.20

EUROPE

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus (including TRNC)
Czech Republic
Denmark
Estonia
Faroe Islands
Finland
France
Georgia

Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macedonia
Malta
Moldova
Monaco
Netherlands
Norway

Poland
Portugal
Romania
Russia
San Marino
Serbia and Montenegro
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
United Kingdom
Uzbekistan
Vatican City

SCHEDULE 1.2.31

FUJITSU PRC CUSTOMERS

A. As of the Effective Date, the “Fujitsu PRC Customers” are:

B. In addition, “Fujitsu PRC Customers” shall include any Entity or person in the PRC specified as such in accordance with the Fujitsu Distribution Agreement.

In the event that an Entity or person becomes an Fujitsu PRC Customer following the Effective Date, FASL grants AMD the right to sell and otherwise distribute Products to such Fujitsu PRC Customer to the extent, but only to the extent, that AMD has a written agreement or other commitment for the purchase and sale of Products in effect at the time that such Customer is deemed to constitute an Fujitsu PRC Customer in accordance with the Fujitsu Distribution Agreement, but only to the extent that failing to sell or so distribute would constitute a breach of such agreement or commitment; *provided* that AMD shall use Best Efforts to transition sales support for such Fujitsu PRC Customer to Fujitsu as soon as reasonably practicable.

1

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

SCHEDULE 1.2.59

TECHNOLOGIES

CS39S: 0.32um Floating Gate NOR Flash Memory technology
CS49S: 0.23um Floating Gate NOR Flash Memory technology
CS99DB: 0.23um MirrorBit/MirrorFlash NOR Flash Memory technology
CS59S: 0.17um Floating Gate NOR Flash Memory technology
CS69: 0.13um Floating Gate NOR Flash Memory technology
CS69S: Shrunk version of CS69 0.13um Floating Gate NOR Flash Memory technology
CS119: 0.13um MirrorBit/MirrorFlash NOR Flash Memory technology
CS79: 0.09um Floating Gate NOR Flash Memory technology
CS129: 0.09um MirrorBit/MirrorFlash NOR Flash Memory technology

SCHEDULE 1.2.61

TRADEMARKS

Current Owner	Country	Trademark	Application No.	Application Date	Registration No.	Registration Date.
Current FASL (Aizu)	Japan	FASL (Abbreviated Company Name)	06-69270	19940713	3275769	19970404
	Japan	FASL (Abbreviated Company Name)	2002-79616	20020918		
	China	FASL (Abbreviated Company Name)	3353609	20021031		
	Malaysia	FASL (Abbreviated Company Name)	2002/13894	20021108		
	Thailand	FASL (Abbreviated Company Name)	500485	20021011		
	Taiwan	FASL (Abbreviated Company Name)	91046125	20021101		
	Hong Kong	FASL (Abbreviated Company Name)	03062/2003	20030228		
	USA	FASL	78/165266	20020918		
	Brazil	FASL	824961390	20020925		
	Canada	FASL	1153684	20020924		
	E.U. (CTM Application)	FASL	2869105	20020927		
	India	FASL	1136784	20020927		
	Mexico	FASL	586379	20030203		
	Russia	FASL	2002720027	20020925		
	USA	F.A.S.L.	78/165267	20020918		
	Brazil	F.A.S.L.	824961404	20020925		

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

Current Owner	Country	Trademark	Application No.	Application Date	Registration No.	Registration Date.
	Canada	F.A.S.L.	1153683	20020924		
	E.U. (CTM Application)	F.A.S.L.	2868032	20020927		
	India	F.A.S.L.	1136785	20020927		
	Mexico	F.A.S.L.	586380	20030203		
	Russia	F.A.S.L.	2002720026	20020925		
	Japan	FASL (Design Logo mark)	2001-074957	20010817	4603401	20020913
	China	FASL (Design Logo mark)	3014709	20011109	3014709	20030221
	South Korea	FASL (Design Logo mark)	2001/47579	20011030		
	Malaysia	FASL (Design Logo mark)	2001/14640	20011108		
	Thailand	FASL (Design Logo mark)	472528	20011119	kor166184	20011119
	Taiwan	FASL (Design Logo mark)	(90)044634	20011030	1016997	20021001
	Hong Kong	FASL (Design Logo mark)	00560/2003	20030115		
	USA	FASL (Design Logo mark)	76/353788	20020102		
	Japan	SPANSION (Design Logo Mark)	2003-37307	20030508		
	Japan	TRUENORTH (Character Only)	2003-31987	20030418		
	Japan	SPANSION (Character Only)	2003-31988	20030418		

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

Current Owner	Country	Trademark	Application No.	Application Date	Registration No.	Registration Date.
AMD	USA	SPANSION (Word Mark)	78/239428	20030418		
	USA	TRUENORTH (Word Mark)	78/239444	20030418		
	USA	SPANSION (Logo)	76/518185	20030530		
	USA	ExpressFlash	Common Law	n/a	n/a	n/a
	USA	ExpressROM	Common Law	n/a	n/a	n/a
	USA	FlashErase	Common Law	n/a	n/a	n/a
	USA	FlashRite	Common Law	n/a	n/a	n/a
	USA	Fusion Flash Card	Common Law	n/a	n/a	n/a
	BRAZIL	MirrorBit	824152603	11/16/01		
	China (PRC)	MirrorBit	3018580	11/16/01	3018580	2/21/03
	European Union (CTM)	MirrorBit	2463297	11/15/01	2463297	3/20/03
	Japan	MirrorBit	2001-106495	11/28/01	4620683	11/15/02
	South Korea	MirrorBit	50599/2001	11/15/01		
	Malaysia	MirrorBit	14858/01	11/15/01		
	Singapore	MirrorBit	T01/17733B	11/15/01	T01/17733B	5/15/2001* * Registered with U.S. priority date.
	Thailand	MirrorBit	472306	11/15/01		
	U.S.A.	MirrorBit	78/063726	5/15/01		
	USA	Memory Miser	Common Law	n/a	n/a	n/a
	USA	Spectrum	Common Law	n/a	n/a	n/a

Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.

Current Owner	Country	Trademark	Application No.	Application Date	Registration No.	Registration Date.
FUJITSU	USA	QuickSwitch	Common Law	n/a	n/a	n/a
	USA	SecSI	Common Law	n/a	n/a	n/a
	USA	UltraNAND	Common Law	n/a	n/a	n/a
	South Korea	FlexBank	99-40825	19991029	485133	20010110
	Singapore	FlexBank	T99/12484D	19991101	T99/12484D	19991101
	EU	FlexBank	1368984	19991028	1368984	20001220
	USA	FlexBank	75/869157	19991209		
	Japan	FlexBank	74096061	19991021	4418675	20000922
	South Korea	HiddenROM	99-12791	19990420	474845	20000808
	EU	HiddenROM	1149087	19990416	1149087	20000614
	Japan	MirrorFlash	76107975	20011204	4615491	20021025
	China	MirrorFlash	3216982	20020620		
	South Korea	MirrorFlash	2002-21243	20020509		
	Taiwan	MirrorFlash	91023285	20020607		
	EU	MirrorFlash	2704104	20020510		
USA	MirrorFlash	76/421654	20020611			

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

SCHEDULE 2.1
EXCEPTIONS TO TERRITORY

Fujitsu Accounts

Fujitsu Extended Period Support

AMD Accounts

Fujitsu Short Term Support

Global Accounts

AMD Short Term Support

AMD Extended Period Support

SCHEDULE 2.3.4

POINT-OF-SALE REPORT INFORMATION

AMD will provide FASL the following information in a format reasonably requested by FASL. FASL may request that reasonable additional information be provided in the point-of-sale reports, if FASL makes the same request of all its distributors and AMD will provide such information.

Sub-Distributor Name
Location
Sell Currency
Buy Currency
AMD Part number
Invoice Number
Invoice Date
Invoice Quantity
End Customer Price
End Customer Code
End Customer Name and Country

2.3.4 - 1

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

SCHEDULE 4.1

INITIAL FORECAST

(See attached document).

1

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

CHANNEL PARTNER TERMS AND CONDITIONS

AMD Rules imposed on its Sub-distributors:

1. General Obligations

A sub-distributor must: (1) aggressively promote sales; (2) obtain **** from ****; (3) maintain a minimum level of inventory; (4) keep AMD informed of trends and competitive conditions; (5) exercise reasonable best efforts to participate in training; and (6) promptly inform customer of product changes, recalls, problems.

2. Altering Products

The sub-distributor may not alter any Products or Product markings, but may program field programmable products consistent with FASL specifications. The sub-distributor will indemnify AMD with respect to claims arising from such programming.

3. Keeping Records

The sub-distributor must keep complete and accurate records of all Products sales and provide detailed information to AMD and FASL.

4. Promotional Programs

The sub-distributor agrees to cooperate with AMD in sales and marketing promotional programs from time to time and **** in costs and expenses. The sub-distributor also agrees to create and maintain adequately informative advertising and merchandising programs consistent with FASL specifications.

5. Pricing/Tax and Policies

Prices paid by the sub-distributor follow the Sub-distributor Pricing Supplement, net all taxes. In lieu of tax, the sub-distributor may provide AMD tax exemption certificates issued by AMD from time to time. The sub-distributor must also observe the policies stated in the Pricing Supplement.

6. Title/Risk of Loss

Title, risk of loss and right of possession passes to sub-distributor upon ****. For product returned by sub-distributor, title, risk of loss and right of possession ****.

7. Payment for Products

The sub-distributor agrees to pay the **** for all Products delivered, net **** days from date of invoice. Any credit arrangements between AMD and the sub-distributor may be withdrawn or modified by ****.

8. Warranties

The sub-distributor will make no warranties which exceed those given by FASL, ****.

9. Backlog upon Termination

Upon termination of the agreement, the sub-distributor must meet with AMD to review existing backlog to determine order cancellation and sub-distributor's intent to purchase items on backlog. ****.

10. Notice of Termination

Upon termination of agreement, the sub-distributor shall take steps reasonably calculated to inform its customers of the termination of its status as an authorized sub-distributor of AMD.

Other Rules:

1. Appointments and Assignments

All Sub-distributor appointments and territory assignments regarding the Products require approval of FASL.

2. Price Protection

Upon AMD's announcement of a general price reduction, the sub-distributor may receive a price reduction for Products still in its possession for the difference between the price paid to AMD and the current sub-distributor cost listed in the new AMD pricing supplement. The sub-distributor must make a timely claim to receive such credit.

3. Price Authorization

****.

4. Products Removed from Pricing Supplement

AMD shall give the sub-distributor written notice of any product removed from pricing supplement. Within 30 days of such notice, the sub-distributor may return removed products for credit.

5. Stock Rotations

Upon authorization by AMD, ****.

6. ** for Credit**

Subject to certain conditions, products maybe **** by the sub-distributor to AMD for credit.

7. Repurchase upon Termination

Subject to certain conditions, and provided the sub-distributor is not terminated for cause or in default of any material obligation, sub-distributor agrees to sell and AMD agrees to repurchase products upon termination of agreement.

8. Point of Sale Data

The sub-distributor agrees to provide point of sale data for **** transaction on a regular basis ****.

SCHEDULE 7.3

**** WAREHOUSES

****	Warehouse	Address
****	****	****
	****	****
	****	****
****	****	****

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

SCHEDULE 10.1

TRANSITIONAL PRODUCTS
By AMD Ordering Part Number

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

EXHIBIT 6.4

TRADEMARK GUIDELINES

The following Guidelines shall apply to use of the Trademarks, as provided by Section 6.4 of the Agreement.

1. Correct Use of Word Trademarks in Written Materials. The Trademarks must be distinguished in print from surrounding text. Unless a Trademark is a Design Mark (as defined below), it should be graphically distinguished in one of the following manners:

- (a) printing the Trademark in upper case letters;
- (b) printing the Trademark in quotation marks;
- (c) printing the Trademark in italics;
- (d) printing the Trademark in bold face type;
- (e) underlining the Trademark.

If the Trademark is normally written in lower case letters, then it must be set off from the surrounding text in some manner (such as quotation marks or italic type) that makes it apparent it is a trademark. Trademarks registered in a stylized form must only be used in the style and form in which they are registered.

2. Correct Use of Design Marks. The proportions of any Trademark that is a design or is composed of stylized text (a "Design Mark") must be maintained, even if the Design Mark is increased or decreased in size. The size of Design Marks must never be so small that the letters and shape of the logo are unrecognizable. Design Marks must always be surrounded by a clear area in which no lettering or design elements appear to ensure that the design Trademark is distinct and not attached or otherwise obscured by other graphic elements.

3. Use of Trademarks in Conjunction with Other Marks. The Trademarks may be used in conjunction with or in close proximity to the logos, designs, trademarks, service marks, names or symbols of another individual or entity only in such a manner that the overall appearance resulting from such use conveys the unequivocal impression that the Trademarks are associated with FASL and that the Trademarks are separate and distinct from any product or service of the other individual or entity. The Trademarks must be used only to refer to FASL's products or to products that include FASL's products.

4. No Alteration of Trademarks. The Trademarks must appear legibly, without alteration and in their complete form. Where these Guidelines (including any attachments) specify the exact style, positioning of the letters, spelling, dimensions and relative size of Trademarks, use of the Trademarks shall be in conformance therewith. FASL shall from time to time provide additional information regarding the proper form of Trademarks, and these Guidelines shall be updated to reflect such additional information, as provided in Section 6.4 of the Agreement. The Trademarks must be used as adjectives, not as verbs and not

possessively. At least once in all printed materials where a particular Trademark is used (preferably the first reference to such Trademark), the Trademark should be followed by the generic name of the Product identified by the Trademark.

5. Trademark Marking Requirements. The proper symbol—[®], [™] or SM— for each Trademark must be used. Although it is not necessary to use a trademark symbol every time a Trademark is used in printed materials or on packaging, labels or in electronic materials, the symbol should be noted at least once on printed materials, including packaging, labels, advertisements and on-line information such as websites, to designate a trademark of FASL. If it is not feasible or aesthetically desirable to place the [®], [™] or SM symbol with a Trademark, the Trademark should be followed, where feasible, by an asterisk (*) that references one of the following footnotes:

- (a) Reg. U.S. Patent and Trademark Office (if applicable).
- (b) This is a trademark of FASL LLC in the United States and other countries.
- (c) This is a registered trademark of FASL LLC in the United States and other countries (once again, if applicable).

Alternatively, a designation of Trademarks on a panel of packaging or at the end of printed materials will suffice. For example, if a press release or detailed advertisement refers to the Trademarks, the following note could appear at the end of the document:

TRADEMARK is a trademark of FASL LLC in the United States and other countries.

Additional factors need to be considered when identifying ownership of the Trademarks in countries other than the United States. For example, some countries do not recognize the [®] symbol. In other countries, improper use of the [®] symbol can result in the forfeiture of trademark rights. Therefore this last approach to identifying ownership of Trademark should be used for labels, packaging, brochures, advertising or promotional materials intended for use in countries other than the United States.

6. Proprietary Notices. In addition to use of the proper trademark and service mark designation, proper credit should be attributed to FASL for all use of Trademarks. An appropriate trademark proprietary notice must list all Trademarks that were used in any document or other materials and state that the Trademarks belong to FASL. Credits may be placed on the copyright page of a document, with other legal notices, or at the bottom of an advertisement, web page or other matter.

7. No Disparaging Use. The Trademarks must not be used in a manner that disparages FASL and/or the Products.

NON-COMPETITION AGREEMENT

THIS NON-COMPETITION AGREEMENT (this "**Agreement**") is made and entered into as of June 30, 2003, by and among Advanced Micro Devices, Inc., a Delaware corporation ("**AMD**"), AMD Investments, Inc., a Delaware corporation ("**AMD Investments**," and together with AMD, the "**AMD Entities**"), Fujitsu Limited, a corporation organized under the laws of Japan ("**Fujitsu**"), Fujitsu Microelectronics Holding, Inc., a Delaware corporation ("**Fujitsu Sub**," and together with Fujitsu, the "**Fujitsu Entities**," and collectively with the AMD Entities, the "**Entities**"), and FASL LLC, a Delaware limited liability company (the "**Joint Venture**" and collectively with the Entities, the "**Parties**").

RECITALS:

A. Concurrently herewith, the Parties have entered into an Amended and Restated Limited Liability Company Operating Agreement (the "**Operating Agreement**"), a Contribution and Assumption Agreement (the "**Contribution Agreement**") and certain related agreements.

B. One of the material conditions precedent to the willingness of the Parties to enter into the Operating Agreement and the Contribution Agreement is that the Parties have agreed to execute, deliver and be bound by this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual promises and covenants of the Parties set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Certain Definitions; Interpretation.

(a) In addition to the terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings when used herein (and capitalized terms not defined herein have the meanings assigned to them in the Operating Agreement):

"**Affiliate**" of a Person, means any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The Parties acknowledge and agree that neither Fujitsu nor AMD is presently controlled by any other Person, and that the Joint Venture and its Subsidiaries shall not be deemed to be (a) Affiliates of the AMD Entities or (b) Affiliates of the Fujitsu Entities.

"**Competing Business**" means any business engaged in the development, production, manufacture, marketing, distribution, promotion or sale of Stand-Alone NVM Products in any country in the world in which the Joint Venture conducts its business; *provided, however*, that (i) the Entities' respective Membership Interests and the conduct of the Joint

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

Venture Business (as defined in the Contribution Agreement), (ii) Fujitsu's and its Affiliates' development, production, manufacture, marketing, distribution, promotion and/or and sales of Ferro-electric non-volatile memory technology and products and (iii) the performance by AMD and its Affiliates and/or Fujitsu and its Affiliates of their respective obligations under agreements between AMD and/or its Affiliates and the Joint Venture and/or its Subsidiaries or between Fujitsu and/or its Affiliates and the Joint Venture and/or its Subsidiaries (*provided* that any such agreement is not entered into for purposes of circumventing the intent of this Agreement), shall each be deemed not to constitute a Competing Business.

“**NVM**” means a non-volatile memory device wherein information stored in a memory cell is maintained without power consumption and the write time (including erase time if there is an erase operation prior to a write operation) exceeds the read time allowing the device to function primarily as a reading device.

“**Stand-Alone NVM Product**” means a semiconductor product (including a single chip or a multiple chip or system product) containing NVM dedicated to data storage wherein all circuitry (including logic circuitry) contained therein is solely to accept, store, retrieve or access information or instructions and cannot manipulate such information or execute instructions.

(b) The following rules of interpretation shall apply to this Agreement:

(i) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.”

(ii) Unless otherwise noted, all references to Sections, Schedules and Exhibits herein are to Sections, Schedules and Exhibits of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(iii) Unless otherwise expressly provided herein, (a) references to a Person include its successors and permitted assigns, (b) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (c) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation.

2. Competition by AMD Entities and their Affiliates with the Joint Venture. Subject to Section 4(d), during the AMD Non-Competition Term, the AMD Entities hereby covenant and agree not to (and AMD agrees to cause its Affiliates not to), directly or indirectly, engage in a Competing Business.

3. Competition by the Fujitsu Entities and their Affiliates with the Joint Venture. Subject to Section 5(d), during the Fujitsu Non-Competition Term, the Fujitsu Entities hereby covenant and agree not to (and Fujitsu agrees to cause its Affiliates not to), directly or indirectly, engage in a Competing Business.

4. Divestiture of Competing Business by AMD Entities. During the AMD Non-Competition Term, the AMD Entities hereby covenant and agree that:

(a) If an AMD Entity or its Affiliates (an “**AMD Acquiring Party**”) acquires a majority equity or other majority ownership interest of a Person whose principal line of business is not a Competing Business, but which has a division or other operations constituting a Competing Business (any such division or operations, an “**AMD Acquired Interest**”), AMD shall (or, if applicable, shall cause AMD Investments or its other applicable Affiliates to) (i) promptly provide the Joint Venture and the Fujitsu Entities with written notice of such acquisition (the “**AMD Acquisition Notice**”) and (ii) provide the Joint Venture with a right of first offer to acquire the AMD Acquired Interest, such right to last for a period of sixty (60) days following the Joint Venture’s receipt of the AMD Acquisition Notice (the “**AMD Offer Period**”). During the AMD Offer Period, AMD shall (or, if applicable, shall cause AMD Investments or its other applicable Affiliates to) (A) provide the Joint Venture with an opportunity to conduct reasonable due diligence on the AMD Acquired Interest and (B) enter into exclusive discussions with the Joint Venture concerning a sale of the AMD Acquired Interest to the Joint Venture. The Joint Venture shall have the right, but not the obligation, to make an offer to purchase all, but not less than all, of the AMD Acquired Interest by providing written notice to AMD (“**Joint Venture/AMD Offer**”) at any time prior to the end of the AMD Offer Period, such written notice to include in reasonable detail the terms on which the Joint Venture proposes to purchase the AMD Acquired Interest.

(b) Any determination as to whether to make a Joint Venture/AMD Offer, and the terms of such Joint Venture/AMD Offer, shall be made by the Board of Managers. If a Joint Venture/AMD Offer is made prior to the conclusion of the AMD Offer Period, the AMD Acquiring Party shall have thirty (30) days from its receipt of the Joint Venture/AMD Offer in which to accept or reject the Joint Venture/AMD Offer by providing the Joint Venture with written notice of its decision within such 30-day period, such decision to be made by the AMD Acquiring Party in its sole discretion. If the AMD Acquiring Party fails to provide the Joint Venture with written notice of its decision within such 30-day period, the AMD Acquiring Party shall be deemed to have rejected the Joint Venture/AMD Offer.

(c) If the Joint Venture does not make a Joint Venture/AMD Offer prior to the conclusion of the AMD Offer Period, or if the AMD Acquiring Party rejects a Joint Venture/AMD Offer, the AMD Acquiring Party shall (and, if applicable, AMD shall cause the AMD Acquiring Party to) take all commercially reasonable steps to sell or otherwise divest the AMD Acquired Interest as soon as reasonably practicable to an unaffiliated Person following the conclusion of the AMD Offer Period or the 30-day period referenced in Section 4(b), whichever is later; *provided, however*, if the AMD Acquired Party rejected a Joint Venture/AMD Offer pursuant to Section 4(b), the terms of sale to the unaffiliated Person shall be no more favorable than the terms set forth in the Joint Venture/AMD Offer. **** AMD Acquiring Party **** the AMD Acquired Interest **** the AMD Acquired Interest, **** the AMD Acquiring Party **** the AMD Acquired Interest ****.

(d) The Parties agree that an AMD Acquiring Party’s acquisition of a majority interest in a Person whose principal line of business is not a Competing Business but which has a division or operations that constitute a Competing Business shall not be deemed to be a breach of the obligations set forth in Section 2 for so long as AMD and/or its applicable Affiliates are complying in all material respects with its obligations under this Section 4.

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

5. Divestiture of Competing Business by Fujitsu Entities. During the Fujitsu Non-Competition Term, the Fujitsu Entities hereby covenant and agree that:

(a) If a Fujitsu Entity or its Affiliates (a “**Fujitsu Acquiring Party**”) acquires a majority equity or other majority ownership interest of a Person whose principal line of business is not a Competing Business, but which has a division or other operations constituting a Competing Business (any such division or operations, an “**Fujitsu Acquired Interest**”), Fujitsu shall (or, if applicable, shall cause Fujitsu Sub or its other applicable Affiliates to) (i) promptly provide the Joint Venture and the AMD Entities with written notice of such acquisition (the “**Fujitsu Acquisition Notice**”) and (ii) provide the Joint Venture with a right of first offer to acquire the Fujitsu Acquired Interest, such right to last for a period of sixty (60) days following the Joint Venture’s receipt of the Fujitsu Acquisition Notice (the “**Fujitsu Offer Period**”). During the Fujitsu Offer Period, Fujitsu shall (or, if applicable, shall cause Fujitsu Sub or its other applicable Affiliates to) (A) provide the Joint Venture with an opportunity to conduct reasonable due diligence on the Fujitsu Acquired Interest and (B) enter into exclusive discussions with the Joint Venture concerning a sale of the Fujitsu Acquired Interest to the Joint Venture. The Joint Venture shall have the right, but not the obligation, to make an offer to purchase all, but not less than all, of the Fujitsu Acquired Interest by providing written notice to Fujitsu (“**Joint Venture/Fujitsu Offer**”) at any time prior to the end of the Fujitsu Offer Period, such written notice to include in reasonable detail the terms on which the Joint Venture proposes to purchase the Fujitsu Acquired Interest.

(b) Any determination as to whether to make a Joint Venture/Fujitsu Offer, and the terms of such Joint Venture/Fujitsu Offer, shall be made by the Board of Managers. If a Joint Venture/Fujitsu Offer is made prior to the conclusion of the Fujitsu Offer Period, the Fujitsu Acquiring Party shall have thirty (30) days from its receipt of the Joint Venture/Fujitsu Offer in which to accept or reject the Joint Venture/Fujitsu Offer by providing the Joint Venture with written notice of its decision within such 30-day period, such decision to be made by the Fujitsu Acquiring Party in its sole discretion. If the Fujitsu Acquiring Party fails to provide the Joint Venture with written notice of its decision within such 30-day period, the Fujitsu Acquiring Party shall be deemed to have rejected the Joint Venture/Fujitsu Offer.

(c) If the Joint Venture does not make a Joint Venture/Fujitsu Offer prior to the conclusion of the Fujitsu Offer Period, or if the Fujitsu Acquiring Party rejects a Joint Venture/Fujitsu Offer, the Fujitsu Acquiring Party shall (and, if applicable, Fujitsu shall cause the Fujitsu Acquiring Party to) take all commercially reasonable steps to sell or otherwise divest the Fujitsu Acquired Interest as soon as reasonably practicable to an unaffiliated Person following the conclusion of the Fujitsu Offer Period or the 30-day period referenced in Section 5(b), whichever is later; *provided, however*, if the Fujitsu Acquired Party rejected a Joint Venture/Fujitsu Offer pursuant to Section 5(b), the terms of sale to the unaffiliated Person shall be no more favorable than the terms set forth in the Joint Venture/Fujitsu Offer. **** Fujitsu Acquiring Party **** the Fujitsu Acquired Interest **** the Fujitsu Acquired Interest. **** the Fujitsu Acquiring Party **** the Fujitsu Acquired Interest ****.

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

(d) The Parties agree that a Fujitsu Acquiring Party's acquisition of a majority interest in a Person whose principal line of business is not a Competing Business but which has a division or operations that constitute a Competing Business shall not be deemed to be a breach of the obligations set forth in Section 3 for so long as Fujitsu and/or its applicable Affiliates are complying in all material respects with its obligations under this Section 5.

6. No Solicitation of Employees.

(a) Without the prior written consent of the Board of Managers of the Joint Venture, each of the AMD Entities during the AMD Non-Solicitation Term, and each of the Fujitsu Entities during the Fujitsu Non-Solicitation Term, shall not (and each shall cause its Affiliates not to), directly or indirectly, either for itself or another Person, (i) hire or retain, or offer to hire or retain, as a director, officer, employee, partner, consultant, independent contractor or otherwise, any individual employed by or seconded to the Joint Venture or any of its Subsidiaries (*provided* that such restriction shall not apply to any secondees as to whom the Joint Venture agrees are being seconded on a temporary basis or for a specific project) or (ii) solicit or encourage any individual to terminate his or her employment with the Joint Venture or any of its Subsidiaries, unless, in either such case, (A) the Joint Venture (and/or its applicable Subsidiary) has terminated the employment or secondment of such individual or (B) at least two (2) years has elapsed since such individual has voluntarily terminated his or her employment or secondment with the Joint Venture (and/or its applicable Subsidiary).

(b) Without the prior written consent of Fujitsu, during the AMD Non-Solicitation Term each of the AMD Entities shall not (and each shall cause its Affiliates not to), directly or indirectly, either for itself or another Person, (i) hire or retain, or offer to hire or retain, as director, officer, employee, partner, consultant, independent contractor or otherwise, any individual employed by a Fujitsu Entity or any of its Affiliates or (ii) solicit or encourage any individual to terminate his or her employment with a Fujitsu Entity or any of its Affiliates, unless, in either such case, (A) the Fujitsu Entity (and/or its applicable Affiliate) has terminated the employment of such individual or (B) at least two (2) years has elapsed since such individual has voluntarily terminated his or her employment with the Fujitsu Entity (and/or its applicable Affiliates).

(c) Without the prior written consent of AMD, during the Fujitsu Non-Solicitation Term each of the Fujitsu Entities shall not (and each shall cause its Affiliates not to), directly or indirectly, either for itself or another Person, (i) hire or retain, or offer to hire or retain, as director, officer, employee, partner, consultant, independent contractor or otherwise, any individual employed by an AMD Entity or any of its Affiliates or (ii) solicit or encourage any individual to terminate his or her employment with an AMD Entity or any of its Affiliates, unless, in either such case, (A) the AMD Entity (and/or its applicable Affiliate) has terminated the employment of such individual or (B) at least two (2) years has elapsed since such individual has voluntarily terminated his or her employment with the AMD Entity (and/or its applicable Affiliates).

(d) Without the prior written consent of AMD or Fujitsu, as applicable, the Joint Venture shall not (and shall cause its Subsidiaries not to), directly or indirectly, either for itself or another Person, (i) hire or retain, or offer to hire or retain, as director, officer, employee,

partner, consultant, independent contractor or otherwise, any individual employed by an AMD Entity or any of its Affiliates or any Fujitsu Entity or any of its Affiliates (other than employees that are dual employees or that are seconded to the Joint Venture or its Subsidiaries by an AMD Entity or its Affiliates or a Fujitsu Entity or its Affiliates) or (ii) solicit or encourage any individual to terminate his or her employment with an AMD Entity or any of its Affiliates or any Fujitsu Entity or any of its Affiliates (other than employees that are dual employees or that are seconded to the Joint Venture or its Subsidiaries by an AMD Entity or its Affiliates or a Fujitsu Entity or its Affiliates), unless, in either such case, (A) the AMD Entity (and/or its applicable Affiliate) or the Fujitsu Entity (and/or its applicable Affiliate), as applicable, has terminated the employment of such individual or (B) at least two (2) years has elapsed since such individual has voluntarily terminated his or her employment with the AMD Entity (and/or its applicable Affiliates) or the Fujitsu Entity (and/or its applicable Affiliate), as applicable.

7. Injunctive Relief. The Parties agree that (a) the provisions of Sections 2, 3, 4, 5 and 6 of this Agreement are reasonable and necessary to protect the legitimate interests of the other Parties and (b) any violation of Sections 2, 3, 4, 5 or 6 of this Agreement will result in irreparable injury to the non-breaching Party(ies), the exact amount of which will be difficult to ascertain, and that remedies at law for any such violation would not be reasonable or adequate compensation to the non-breaching Party(ies) for such violation. Accordingly, each Party agrees that if such Party violates the provisions applicable to such Party in Sections 2, 3, 4, 5 or 6 the non-breaching Party(ies) shall be entitled to specific performance and injunctive relieve, without posting bond or other security, and without the necessity of proving actual damages, in addition to any other remedy which may be available at law or in equity, including consequential damages.

8. AMD Term.

(a) AMD Non-Competition Term. Sections 2 and 4 of this Agreement shall terminate with respect to the AMD Entities (the period from the date hereof until such termination, the “**AMD Non-Competition Term**”):

(i) immediately upon written notice of the AMD Entities to the other Parties at any time if (A) a Material Breach by a Fujitsu Entity has occurred, the AMD Entities have elected not to fund the related funding obligation on behalf of the Fujitsu Entities as provided in Section 10.6.1(b) of the Operating Agreement, and the Fujitsu Entities have not fully cured such Material Breach within the Cure Period, (B) a Material Breach by a Fujitsu Entity has occurred, the AMD Entities have elected to fund the related funding obligation on behalf of the Fujitsu Entities as provided in Section 10.6.1(b) of the Operating Agreement and the Fujitsu Entities have not purchased from the applicable AMD Entity the applicable convertible promissory note within the Cure Period or (C) a Material Breach by a Fujitsu Entity has occurred for which there is no Cure Period under the terms of the Operating Agreement;

(ii) immediately upon the dissolution of the Joint Venture pursuant to Article 10 of the Operating Agreement or otherwise;

(iii) in the event of a Change in Control of Fujitsu has occurred, one (1) year after the date on which the AMD Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Percentage Interest; or

(iv) in all other circumstances, two (2) years after the date on which the AMD Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Percentage Interest.

(b) AMD Non-Solicitation Term. Section 6 of this Agreement shall terminate with respect to the AMD Entities (the period from the date hereof until such termination, the "**AMD Non-Solicitation Term**");

(i) immediately upon written notice of the AMD Entities to the other Parties at any time if (A) a Material Breach by a Fujitsu Entity has occurred, the AMD Entities have elected not to fund the related funding obligation on behalf of the Fujitsu Entities as provided in Section 10.6.1(b) of the Operating Agreement, and the Fujitsu Entities have not fully cured such Material Breach within the Cure Period, (B) a Material Breach by a Fujitsu Entity has occurred, the AMD Entities have elected to fund the related funding obligation on behalf of the Fujitsu Entities as provided in Section 10.6.1(b) of the Operating Agreement and the Fujitsu Entities have not purchased from the applicable AMD Entity the applicable convertible promissory note within the Cure Period or (C) a Material Breach by a Fujitsu Entity has occurred for which there is no Cure Period under the terms of the Operating Agreement;

(ii) immediately upon the dissolution of the Joint Venture pursuant to Article 10 of the Operating Agreement or otherwise;

(iii) in the event of a Change in Control of Fujitsu has occurred, two (2) year after the date on which the AMD Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Percentage Interest; or

(iv) in all other circumstances, three (3) years after the date on which the AMD Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Percentage Interest.

9. Fujitsu Term.

(a) Fujitsu Non-Competition Term. Sections 3 and 5 of this Agreement shall terminate with respect to the Fujitsu Entities (the period from the date hereof until such termination, the "**Fujitsu Non-Competition Term**");

(i) immediately upon written notice of the Fujitsu Entities to the other Parties at any time if (A) a Material Breach by an AMD Entity has occurred, the Fujitsu Entities have elected not to fund the related funding obligation on behalf of the AMD Entities as provided in Section 10.6.1(b) of the Operating Agreement, and the AMD Entities have not fully cured such Material Breach within the Cure Period, (B) a Material Breach by an AMD Entity has occurred, the Fujitsu Entities have elected to fund the related funding obligation on behalf of the AMD Entities as provided in Section 10.6.1(b) of the Operating Agreement and the AMD Entities have not purchased from the applicable Fujitsu Entity the applicable convertible promissory note within the Cure Period or (C) a Material Breach by an AMD Entity has occurred for which there is no Cure Period under the terms of the Operating Agreement;

(ii) immediately upon the dissolution of the Joint Venture pursuant to Article 10 of the Operating Agreement or otherwise;

(iii) in the event of a Change in Control of AMD has occurred, one (1) year after the date on which the Fujitsu Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Percentage Interest; or

(iv) in all other circumstances, two (2) years after the date on which the Fujitsu Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Percentage Interest.

(b) Fujitsu Non-Solicitation Term. Section 6 of this Agreement shall terminate with respect to the Fujitsu Entities (the period from the date hereof until such termination, the "**Fujitsu Non-Solicitation Term**");

(i) immediately upon written notice of the Fujitsu Entities to the other Parties at any time if (A) a Material Breach by an AMD Entity has occurred, the Fujitsu Entities have elected not to fund the related funding obligation on behalf of the AMD Entities as provided in Section 10.6.1(b) of the Operating Agreement, and the AMD Entities have not fully cured such Material Breach within the Cure Period, (B) a Material Breach by an AMD Entity has occurred, the Fujitsu Entities have elected to fund the related funding obligation on behalf of the AMD Entities as provided in Section 10.6.1(b) of the Operating Agreement and the AMD Entities have not purchased from the applicable Fujitsu Entity the applicable convertible promissory note within the Cure Period, or (C) a Material Breach by an AMD Entity has occurred for which there is no Cure Period under the terms of the Operating Agreement;

(ii) immediately upon the dissolution of the Joint Venture pursuant to Article 10 of the Operating Agreement or otherwise; or

(iii) in the event of a Change in Control of AMD has occurred, two (2) year after the date on which the Fujitsu Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Percentage Interest; or

(iv) in all other circumstances, three (3) years after the date on which the Fujitsu Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Percentage Interest.

10. Termination as to Joint Venture. The obligations of the Joint Venture under Section 6(d) shall terminate as to any individual in the employ of any AMD Entity or Affiliate thereof upon the termination of the AMD Non-Solicitation Term pursuant to Section 8(b), and the obligations of the Joint Venture under Section 6(d) shall terminate as to any individual in the employ of any Fujitsu Entity or Affiliate thereof upon the termination of the Fujitsu Non-Solicitation Term pursuant to Section 9(b).

11. Notices. Unless otherwise provided herein, all notices, requests, instructions or consents required or permitted under this Agreement shall be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) ten business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All communications will be sent as follows (or to such other address or facsimile number as may be designated by a Party giving written notice to the other Parties pursuant to this Section 11):

If to the Joint Venture:

FASL LLC
Attention: General Counsel
One AMD Place m/s 150
PO Box 3453
Sunnyvale, California 94086
U.S.A.
Facsimile: (408) 774-7399

If to the AMD Entities:

Advanced Micro Devices, Inc.
Attention: General Counsel
One AMD Place
Sunnyvale, California 94086
Facsimile: (408) 774-7399

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
Attention: Tad Freese
505 Montgomery Street, Suite 1900
San Francisco, California 94111
Facsimile: (415) 395-8095

If to the Fujitsu Entities:

Fujitsu Limited
Electronic Devices Group
Fuchigami 50 Akiruno-shi
Tokyo 197-0833
Japan
Attention: Executive Vice President
Business Planning & Promotion Group
Facsimile: +81-42-532-2550

12. Amendments; No Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is duly executed, in the case of an amendment, by the Joint Venture, each of the AMD Entities and each of the Fujitsu Entities, or, in the case of a waiver, by the Party against whom the waiver is to be enforced. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial waiver or exercise thereof preclude the enforcement of any other right, power or privilege.

13. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, including any entity that is the successor to substantially all of the assets or businesses of such Party. No Party may assign, delegate or transfer any of its rights or obligations hereunder, other than to a successor to substantially all of the assets or businesses of such Party, without the prior written consent of the other Parties. Any attempted assignment in violation of this Section 14 shall be null and void.

15. Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

16. Construction; Interpretation. No Party, nor its counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all provisions of this Agreement shall be construed in accordance with their fair meaning, and not strictly for or against any Party.

17. Severability. If any provision in this Agreement should be found or be held to be invalid or unenforceable (including, without limitation, the geographic and temporal restrictions contained herein), then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will use their respective reasonable efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the Parties' intent in entering into this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

19. Entire Agreement. This Agreement, together with Operating Agreement, the Contribution Agreement, the Confidentiality Agreement and the Transaction Documents constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior oral and written, and all contemporaneous oral, agreements and understandings pertaining thereto.

20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction).

21. Dispute Resolution. The Parties hereby agree that claims, disputes or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement (or any other agreement contemplated by or related to this Agreement), shall be resolved in accordance with the dispute resolution procedures set forth in Schedule A to the Operating Agreement, which procedures are incorporated herein and deemed to apply *mutatis mutandis* to the Parties.

22. Further Assurances. Each of the Parties does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary or advisable to effectively carry out the purposes of this Agreement.

23. Third-Party Beneficiaries. Nothing herein expressed or implied is intended to or shall be construed to confer upon or give any Person, other than the Parties hereto, and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

(Signature Page Follows)

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

ADVANCED MICRO DEVICES, INC.

By: _____ /s/ Thomas M. McCoy

Name: Thomas M. McCoy
Title: Senior Vice President, General Counsel

AMD INVESTMENTS, INC.

By: _____ /s/ Thomas M. McCoy

Name: Thomas M. McCoy
Title: Senior Vice President, General Counsel

FUJITSU LIMITED

By: _____ /s/ Hiroaki Kurokawa

Name: Hiroaki Kurokawa
Title: President and Representative Director

FUJITSU MICROELECTRONICS HOLDING, INC.

By: _____ /s/ Kazuo Iida

Name: Kazuo Iida
Title: President

FASL LLC

By: _____ /s/ Thomas M. McCoy

Name: Thomas M. McCoy
Title: Manager

A-1

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as ****. A complete version of this exhibit has been filed separately with the Securities and Exchange Commission.*

AGREEMENT

between

SI INVESTMENT LIMITED LIABILITY COMPANY & CO KG

and

M + W ZANDER FACILITY ENGINEERING GMBH

Pertaining to the
Design and Construction of Fab X, Dresden, Germany

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [***]. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

Table of Contents

<u>PREAMBLE</u>	5
<u>RECITALS</u>	5
<u>PROVISIONS</u>	8
1. Parts of this Agreement	8
2. Scope of Work	9
2.1. Scope of Work	9
2.2. Document Flow	11
2.3. Conduct of Executing Works	12
2.4. Materials	12
2.5. Company's inspections	13
2.6. Obligations	13
2.6.1. Statutory and like Requirements	13
2.6.2. Progress Updates	14
2.6.3. Construction Diary	14
2.6.4. Calibrating, Adjusting, Testing	14
2.6.5. Permits	14
2.6.6. Construction Management	15
2.6.7. Planning, Engineering, Designing, Architectural and like Works	15
2.6.8. Operation and Maintenance Data	16
2.6.9. Mechanical, Electrical, Processing Components	16
2.6.10. Letter of Intent	16
2.6.11. Health and Safety Plan/Site Rules	16
2.6.12. Environmental, Health, Safety and Security Requirements	16
2.6.13. Obligation to observe Rules	17
2.6.14. Acceptances by Authorities	17
2.6.15. Health and Safety Coordinator	17
2.6.16. Clean Site	17
2.6.17. Construction Supervisor	18
2.6.18. Clean Roads	18
2.6.19. Security	18
3. Remuneration	18
3.1. Lump Sum Price	18

3.2. Payments on Account	19
3.3. German Income Tax Act	19
3.4. Presupposition for Payments becoming due	19
4. Changes	20
4.1. Adjustment can be calculated based on lump sum price calculation	21
4.1.1. Works to be executed in addition	21
4.1.2. Works not to be executed	22
4.1.3. Changes leading to Reductions and Additions	22
4.2. Adjustment can not be based on lump sum price calculation	22
4.3. Payments	23
5. Subcontracting/Personnel	23
5.1. Subcontracting	23
5.2. Personnel	24
6. Formal Acceptance	26
6.1. Formal Acceptance	26
6.2. No prior Acceptance	26
7. Milestones; Contractual Penalty	27
7.1. Milestones (<i>Vertragsfristen</i>)	27
7.2. Contractual Penalty (<i>Vertragsstrafe</i>)	28
7.3. Further Milestones	30
7.4. Schedule	31
7.5. Force Majeure	31
8. Distribution of Risk	32
9. Defects Liability	32
9.1 Defects Liability	32
9.2. Warranty	33
9.3. Warranties	33
10. Securities	35
10.1. Retention	35
10.2. Performance Guarantee (<i>Vertragserfüllungsbürgschaft</i>)	35
10.3. Defects Liability Guarantee (<i>Gewährleistungsbürgschaft</i>)	36
10.4. Assignment for Security Purposes	36
10.5 Security to be provided by Subcontractors	37
11. Copyrights (Urheberrechte)	37
11.1. Confirmation	37
11.2. Rights to Ideas and other intellectual Property	37
11.3. Payment included in Lump Sum	40
12. Lender	40
13. Termination	40

13.1. Termination Rights provided for in VOB/B	40
13.2. Extraordinary Termination Right	40
14. Liability	41
14.1. Contractor generally liable	41
14.2. Liability for Damages	41
14.3. Limitations on Liability	42
14.4. Insurance	44
14.5. Nature of Company's Approval	44
14.6. Contractor's Responsibility for Construction Means	45
15. Identification	45
16. Liens (Rechte Dritter)	45
17. Confidentiality	45
18. Section 648 BGB not applicable	47
19. Law and Jurisdiction Miscellaneous	47
20. Condition Subsequent	48

PREAMBLE

This Design/Build Agreement (hereinafter referred to as “**Agreement**”) is made and entered into this 20th of November, 2003 by and between SI Investment Limited Liability Company & Co KG, Louis-Braille-Straße 5, 01099 Dresden, Germany (hereinafter referred to as “**Company**”) and M+W Zander Facility Engineering GmbH, Lotterbergstraße 30, 70499 Stuttgart, Germany (hereinafter referred to as “**Contractor**”). **Company** and **Contractor**, are collectively referred to as “**Parties**” or each separately as “**Party**”.

RECITALS

A. Company will purchase certain land located in Dresden, Wilschdorfer Straße marked in the plan attached as **Exhibit 1 Site Plan** in blue (the “**Site**”).

B. Contractor, or a joint venture of which **Contractor** forms part respectively, entered into a **Co-Operation Agreement** (Kooperationsvertrag vom 20. November 2003) under the conditions of which **Contractor** shall enter into a partnership agreement. Therefore, **Contractor**, or a joint venture of which **Contractor** forms part respectively, is not only **Party** to this **Agreement** but also limited partner (*Gesellschafter/Kommanditist*) of **Company**.

C. Company desires to obtain a new state-of-the-art microprocessor wafer fabrication facility for designing and producing integrated circuits (300 mm microprocessor wafers (65 nm technology, intended to be later on upgraded to up to 45 or 32 nm (to the degree defined in this **Agreement**) and associated support facilities to be located on the **Site**. The result (*Werkerfolg*) of the works and services to be executed or rendered under this **Agreement** is referred to as “**Fab X**” (also referred to as “**S.I.L.K.**”). **Company** commissions **Contractor** to plan, design, construct, erect, install, equip, start up, calibrate, adjust and turn over **Fab X** and execute all and any works, render all and any services and make all and any deliveries (hereinafter collectively referred to as “**Works**”) which are necessary or expedient for completing **Fab X** in a turn-key and functional manner and in a ready for unrestricted hook up condition, including, but not limited to, all and anything which is technically or functionally necessary or expedient therefore, including, but not limited, to all and any items which could have an impact on productivity, yield or ease of use but excluding any works and services explicitly excluded in this **Agreement**.

D. Contractor desires to plan, design, construct, erect, install, equip, start up, certify, calibrate, adjust and turn over **Fab X** in the manner provided for in **Recital C** and to execute all **Works** necessary or expedient therefore and to execute the **Works** and to complete **Fab X** in a way meeting the standards provided for in this **Agreement**. As consideration in full for executing the **Works** and completing **Fab X** in accordance with this **Agreement**, **Company** will pay to **Contractor** the lump sum provided for in this **Agreement**

E. On the site adjacent to the **Site**, **Contractor** (or **Contractor**'s legal predecessor Meissner + Wurst GmbH + Co. KG) completed a wafer fabrication support facility as well as later extensions and improvements thereto (this fabrication, the support facilities, the extensions and improvements is hereinafter referred to as "**Fab 30**") under a number of agreements, including a Design/Build Agreement with a third party (AMD Saxony Manufacturing GmbH, the legal predecessor of AMD Saxony Limited Liability Company & Co. KG) of November 15, 1996 as amended, a hook-up agreement of February 28, 1998 as amended and under later agreements especially under a letter of intent of June 7, 2000, an agreement of June 22, 2001 and a contract of November 28./December 5, 2002).

From being involved in the works, services and deliveries under the aforementioned agreements, contracts and letters of intent and especially the details related to and underlying the execution, rendering or making the works, services and deliveries, **Contractor** is aware of the details of the completion of a state-of-the-art microprocessor wafer fabrication facility referred to in **Recital C**. Therefore, and because of surveys and examinations carried out by, or on behalf of, **Contractor**, **Contractor** is aware of the standards and requirements of such project, especially about all specifics and requirements of clean room conditions and is aware of the **Site Condition**, including the subsurface, environmental and hydrological condition. Moreover, **Contractor** is aware of the impact executing the **Works** under this **Agreement** could have on the operation of, and the production in, the adjacent **Fab 30**. **Contractor** acknowledges that **Contractor** is aware that any detrimental impact the execution of the **Works** may have on **Fab 30** and the operation of, and production in, **Fab 30** could lead to losses, damages, claims etc, for which **Contractor** is liable to the extent provided for in this **Agreement**. **Contractor**, therefore, knows and acknowledges that all and any **Works** to be executed under this **Agreement** shall – unless otherwise agreed upon by the **Parties** - be executed in a manner not affecting, influencing, disturbing or having any other detrimental impact, including, but not limited to, detrimental impact by vibrations, on the operation of **Fab 30** or the production within **Fab 30**, including, but not limited to, the production of semiconductor processors. **Contractor** has examined and reviewed, and is aware of, all and any conditions relating to the **Site**, including, but not limited to, ground conditions, subsurface conditions and hydrological conditions and **Contractor** is aware of all and any requirements and

conditions of a proper operation and production (including, but not limited to, the production of semiconductor processors) within **Fab 30** as well as within **Fab X** (all these conditions are hereinafter referred to as „**Site Conditions**“). **Contractor** is liable for executing the **Works** in the aforementioned manner and meeting the requirements of the **Site Conditions**.

F. Company desires and **Contractor** acknowledges and is aware that it is essential that **Fab X** is completed within the milestones provided for in this **Agreement** and that meeting the given time frame is a presupposition (*Voraussetzung*) for **Company** being able to operate **Fab X** and produce in **Fab X**, otherwise an economical and efficient operation and production will be threatened or not be possible. Therefore, **Contractor** undertakes to complete the Works in the given time frame. Moreover, **Parties** are aware that the environmental, health, safety and security requirements provided for in this agreement to be met on **Site**, when executing the works and by **Fab X** are far above average standard and **Contractor** undertakes to meet such requirements.

Moreover, both **Parties** explicitly acknowledge and confirm that they are aware that for being granted the allowances **Company** applied for under the code of allowances (*Investitionszulagengesetz*) based on which the financial concept underlying this project was developed it is of utmost importance to reach the respective degree of completion described under no. 7.1.c) until December 31, 2004.

G. Company's ability to carry out the project underlying this **Agreement** depends on the fact that the financial presuppositions the project is based on are met or maintained. Therefore, **Parties** agree that **Company** has an extraordinary termination right under circumstances described in this **Agreement** the impact of which on the remuneration is stipulated in this **Agreement**.

H. Contractor confirms that **Contractor** will at all and any time keep the project underlying this **Agreement** equipped with all and any resources, know-how, work force and all and any means and measures necessary to properly execute the **Works** under this **Agreement** and to complete **Fab X** in time and that **Contractor** will not reduce its activities, work force or personnel and executing other projects or contracts will not detrimentally impact the project..

PROVISIONS

1. Parts of this Agreement

In the event of discrepancies, the following parts of this **Agreement** shall be applicable in the order set forth hereinafter:

- a) this document (“**Document**”)
- b) the Exhibits to this **Document**
 - aa) Exhibit 1: Site Plan
 - bb) Exhibit 2: ITRS Roadmap
 - cc) Exhibit 3: Design
 - dd) Exhibit 4: List of Interfaces
 - ee) Exhibit 5: Design Documents
 - ff) Exhibit 6: Company’s Inspections
 - gg) Exhibit 7: Payment Schedule
 - hh) Exhibit 8: Operation and Maintenance Data
 - ii) Exhibit 9: EHS Program
 - jj) Exhibit 10: Clean Protocol
 - kk) Exhibit 11: Lump Sum Price Calculation
 - ll) Exhibit 12: List of Subcontractors consented to
 - mm) Exhibit 13: Workforce Regulations
 - nn) Exhibit 14: Milestone Definitions
 - oo) Exhibit 15: Time Schedule

- pp) Exhibit 16: Performance Guarantee
- qq) Exhibit 17: Defects Liability Guarantee
- c) the rules of sound engineering practice (*anerkannte Regeln der Technik*)
- d) the applicable *DIN*, *VDI* and *VDE* regulations)
- e) the provisions of *VOB/B* (*Verdingungsordnung für Bauleistungen, Teil B*) The parties clarify that this does not mean that *VOB/A* is applicable as well.
- f) the German Civil Code (BGB = Bürgerliches Gesetzbuch).

2. Scope of Work

2.1. Scope of Work

Contractor is obliged to deliver to **Company** a new state-of-the-art microprocessor wafer fabrication facility for designing and producing integrated circuits (300 mm microprocessor wafers (65 nm technology, intended to be later on upgraded to up to 45 or 32 nm (regarding 32 nm defined in the roadmap attached hereto as **Exhibit 2 ITRS Roadmap**) and associated support facilities to be located on the **Site**. **Contractor** shall plan, design, construct, erect, install, equip, start up, calibrate, adjust and turn over **Fab X** and execute all **Works** which are necessary or expedient for completing **Fab X** in a turn-key and functional manner and in accordance with the specifications and descriptions contained in **Exhibit 3 Design** and in a ready for unrestricted hook up condition, regardless of whether the respective item or component is explicitly mentioned in **Exhibit 3 Design** and including, but not limited to, all and anything which is technically or functionally necessary or expedient therefore, including, but not limited to, all and any items which could have an impact on productivity, yield or ease of use but excluding any works and services as named as excluded in the list of interfaces attached as **Exhibit 4 List of Interfaces**.

If and to the extent the description of **Fab X** is insufficient in order to define specifications for **Fab X** reference shall be made to the specifications and descriptions under the agreement of November 28./December 5, 2002 relating to

the Advanced Technology and Process Center (ATPC) or, if this agreement is insufficient to the specifications and descriptions under the Design/Build Agreement of November 15, 1996.

The parties acknowledge and confirm that in case more than one way of executing the **Works** leads to completion of **Fab X** or a component or part thereof meeting the standards and requirements provided in this **Agreement**, **Company** has the right to choose the way of execution. If exercising such right to choose leads to cost or time impact this impact is covered by the change procedure provided for in no. 4.

These aforementioned obligations include, but are not limited to, all and any **Works** described and provided for in the design documents attached as **Exhibit 3 Design**. All standards or requirements necessary or expedient as described herein for completing **Fab X** in a turn-key and functional manner and in a ready for unrestricted hook up condition shall be met by the **Works**, this includes, but is not limited to, meeting all standards and requirements provided for in the design documents attached as **Exhibit 3 Design**.

As exception, the **Parties** clarify that to the extent regulations in **Exhibit 3 Design** deal with the technical solution for insurance reasons (FM or VDS) (which is still pending) elements of the **Works** are only covered by the lump sum provided for in no. 3.1 to the extent these aforementioned elements of the **Works** are explicitly described in **Exhibit 3 Design**. To the extent that regarding the aforementioned elements of the **Works** works or services other than those contained in **Exhibit 3 Design** are requested the impact on the remuneration shall be determined in accordance with the procedure provided for under no. 4.

The **Contractor** shall with regard to planning, designing, constructing, erecting, installing, equipping, starting up, calibrating, adjusting and turning over use best efforts to secure maximum possible value added and to execute the **Works** in a manner that there is no detrimental impact on the operation of, and production in, **Fab 30**.

Moreover, **Contractor** is aware of the impact executing the **Works** under this **Agreement** could have on the operation of, and the production in, the adjacent **Fab 30**. **Contractor** acknowledges that **Contractor** is aware that any detrimental impact the execution of the **Works** may have on **Fab 30** and the operation of, and production in, **Fab 30** could lead to losses, damages, claims etc, for which **Contractor** is liable to the extent provided for in this

Agreement. Contractor, therefore, knows and acknowledges that all and any **Works** to be executed under this **Agreement** shall – unless otherwise agreed upon by the **Parties**—be executed in a manner not affecting, influencing, disturbing or having any other detrimental impact, including, but not limited to, detrimental impact by vibrations, on the operation of **Fab 30** or the production within **Fab 30**, including, but not limited to, the production of semiconductor processors. **Contractor** has examined and reviewed, and is aware of, all and any conditions relating to the **Site**, including, but not limited to, ground conditions, subsurface conditions and hydrological conditions and **Contractor** is aware of all and any requirements and conditions of a proper operation and production (including, but not limited to, the production of semiconductor processors) within **Fab 30** as well as within **Fab X** (to all these conditions is hereinafter referred to as „**Site Conditions**”). **Contractor** is liable for executing the **Works** in the aforementioned manner and meeting the requirements of the **Site** Conditions but shall be entitled to an adjustment of the remuneration or an extension of time under the respective applicable provision of this **Agreement** if and to the extent findings (*Kampfmittel* or *archäologische Funde*) lead to a change of the scope of work.

2.2.

Document Flow

Contractor shall submit all **Design Documents** as defined in **Exhibit 5 Design Documents** to **Company** for approval (approval means written consent). Such approval by **Company** shall not unreasonably be withheld. **Company** shall approve or disapprove such documents latest within five (5) working days (working days in the meaning of this **Agreement** are all days from Monday through Saturday except for days which are public holidays (*gesetzliche Feiertage*) in the Free State of Saxony) from receipt. If **Contractor** has not received the approval or disapproval (defining the reason(s) for disapproval at the same point in time) within this period from **Company** receiving the particular document, **Contractor** shall give **Company** notice of **Company**'s failure to respond in time. If **Contractor** has not received **Company**'s approval or disapproval within 24 hours from **Company**'s receipt of such notice, the particular document shall be deemed to be approved by **Company**. **Contractor** shall not be entitled to an extension of time because of **Company**'s justified refusal to approve a certain document.

2.3.

Conduct of Executing Works

All **Works** to be executed shall, in addition to being executed in a manner meeting the standards and requirements in other parts or provisions of this **Agreement**, be executed in a manner meeting clean room standards as defined in **Exhibit 3 Design**.

Contractor explicitly acknowledges that **Contractor** is aware of the conditions and requirements of a 300 mm microprocessor wafer fabrication facility and the standards to be met by such facility (which are far higher than the standards of regular industrial construction), especially those to be met by the **Works** and **Fab X**, including, but not limited to, cleanroom conditions. **Contractor** explicitly warrants that **Contractor** sufficiently informs all subcontractors of all conditions, requirements and standards to be met on or by such facility, including, but not limited to, cleanroom conditions.

Company has an absolute ban on smoking in place over the entire **Site** and in all its buildings, with the exception of smoking zones marked accordingly.

For reasons of personal and general safety, the consumption of any alcoholic beverages during work, or starting work in an intoxicated condition, is prohibited. This also applies for other drugs.

Contractor hereby undertakes to strictly monitor compliance with these prohibitions on the part of its employees or the staff of any subcontractors used. Repeated breaches or offences, in spite of a warning, shall be a valid basis for expulsion of the employee or the subcontractor from the **Site**.

2.4.

Materials

Contractor shall, on demand of **Company**, submit for **Company**'s approval, detailed information, including, but not limited to, model number, quality, manufacturer, about all materials **Contractor** intends to use. In addition, **Contractor** shall submit to **Company**, for **Company**'s approval, detailed information about all materials which are exposed to parts of **Fab X** which are to be or might be operated under clean room conditions. Such approval shall not unreasonably be withheld by **Company**.

2.5. **Company's inspections**

Company shall, at any time, have the right to review and inspect all and any of the **Works** by **Contractor**, including but not limited to, any **Works** documents, plans, drawings, **Design Documents**, discs, electronic data and like (except for commercial data which shall – unless provided otherwise in this **Agreement**—only be disclosed if and to the extent necessary for determining price adjustments under no. 4.2 of this **Document**). Moreover, **Contractor** shall – on demand – submit to **Company** copies of any of such documents and all documentation and information related to the execution of the **Works** to be executed. **Exhibit 6 Company's Inspections** shall apply accordingly to any **Works** to be executed under this **Agreement**.

2.6. **Obligations**

The **Parties** clarify and acknowledge that the obligations which form part of the **Works** include, but are not limited to, the following:

2.6.1. **Statutory and like Requirements**

Contractor shall obey Baustellenverordnung and all and any statutory and like requirements including, but not limited to *Arbeitsstättenverordnung, Arbeitnehmerüberlassungsgesetz, Bundesimmissionschutzgesetz, Strahlen- und Röntgenschutzverordnung, Sicherheitsbestimmungen, Bestimmungen der Berufsgenossenschaften* and all and any *Unfallverhütungsvorschriften* (accident prevention regulations) and all and any accident prevention obligations and EU directives and shall impose this duty on all subcontractors. This includes, but is not limited to, **Contractor's** obligation to develop a security and health plan (*Sicherheits- und Gesundheitsschutzplan*). If **Contractor** proves that changes of such statutory or like requirements becoming effective after conclusion of this **Agreement** of which **Contractor** has not been aware at the time of concluding this **Agreement** results in changes in the scope of work the financial impact of the total of such changes of such laws or like is more than Euro 75,000.00 (seventy five thousand Euro) the change order procedure provided for in no. 4 shall apply on the entire amount (if the amount is Euro 75,000.00 or less the change order procedure shall not apply but the resulting impact on the scope of work shall be covered by the lump sum provided for in no. 3.1).

2.6.2. Progress Updates

Contractor shall provide **Company**, with monthly status and progress reports and – upon reasonable and justified request of **Company** – with periodic progress reports in the frequency justified by the situation. In addition **Contractor** shall provide **Company** with weekly progress updates. Moreover, **Contractor** shall provide **Company** with technical progress reports relating to all completions of relevant parts of **Fab X** (for example “Fab construction weathertight” or “clean room ready for equipment”) and of milestones provided for in this **Agreement** and for completions which trigger – under the payment schedule for progress payments attached as **Exhibit 7 Payment Schedule** - payments on account.

2.6.3. Construction Diary

Contractor shall keep a construction diary (*Bautagebuch*) on an at least daily basis.

2.6.4. Calibrating, Adjusting, Testing

The obligations of **Contractor** shall include, but not be limited to, all and any calibrating, adjusting, testing and like of **Fab X** and all and any parts and components thereof to the extent necessary or expedient for completing **Fab X** in accordance with this **Agreement**.

2.6.5. Permits

Contractor shall be obliged to procure all necessary permits, acceptances and like which are necessary or expedient for executing or completing the **Works** or completing **Fab X** in accordance with this **Agreement**, including, but not limited to, the building permit, necessary permits under water law (*wasserrechtliche Genehmigungen, Erlaubnisse etc.*), permits required under the Working Hours Law (*Arbeitszeitgesetz*) (e.g. for work on Sundays).

2.6.6. Construction Management

Contractor shall render all and any construction management and supervision services necessary or expedient for the execution and completion of the **Works** and the completion of **Fab X** in accordance with this **Agreement**. This includes, but is not limited to, **Contractor**'s obligation to coordinate with persons, including but not limited to work or services performed by **Company** and with other contractors employed by **Company**, acting on the **Site** on behalf of **Company**. Such person acting on behalf of **Company** shall obey **Contractor**'s construction site rules and shall attend **Contractor**'s coordination meetings which **Contractor** shall carry out in a form, number and in intervals (at least weekly) as, and with all participants, necessary and expedient and invite **Company** to, and provide **Company** with protocols of all coordination meetings. However, **Contractor** shall not be liable and responsible for conduct of such persons acting on behalf of **Company** (*Erfüllungsgehilfen des Auftraggebers*) unless such conduct is caused by **Contractor**. **Company** shall instruct and inform any such person accordingly. The obligations of **Contractor** shall include, but shall not be limited to, coordinating the timing of work done by **Contractor** with that carried out by third parties,

- coordinating the physical location and personnel allocation arrangements for work done by **Contractor** and third party works,
- harmonizing the structural engineering aspects of the work done by **Contractor** with third party contributions to the project and
- coordinating works and firms, so that all aspects of the construction project will proceed in accordance with the accident prevention regulations.

2.6.7. Planning, Engineering, Designing, Architectural and like Works

The obligations of **Contractor** shall include all and any planning, engineering, designing, architectural and like works or services necessary or expedient for the execution or completion of the **Works** and **Fab X** in accordance with this **Agreement**. **Contractor** shall be obliged to deliver the completed design for **Fab X**.

These planning, engineering, designing, architectural and like works, include, but shall not be limited to, preparation and submission of all and any **Design Documents** defined in **Exhibit 5 Design Documents**.

2.6.8. Operation and Maintenance Data

With respect to the obligation of **Contractor** regarding Operation and Maintenance Data, the provisions of **Exhibit 8 Operation and Maintenance Data** shall apply to the extent reasonably applicable unless explicitly provided for otherwise in this **Document**.

2.6.9. Mechanical, Electrical, Processing Components

The obligations of **Contractor** shall include, but shall not be limited to, all and any **Works** necessary or expedient for planning, designing, constructing, erecting, installing, equipping, starting up, calibrating, adjusting and turning over the completed shell and all mechanical, electrical and processing components of **Fab X** in a turn-key and functional manner and in a ready for unrestricted hook up condition in accordance with this **Agreement**.

2.6.10. Letter of Intent

The works and services rendered under the letter of intent of May 16, 2003 as amended under the letters of August 13, 2003 and November 3, 2003.

2.6.11. Health and Safety Plan/Site Rules

Contractor shall formulate a health and safety plan and a set of site rules, and shall make the required prior notification to the competent factory inspectorate authority (*Gewerbeaufsichtsamt*).

2.6.12. Environmental, Health, Safety and Security Requirements

Contractor shall meet all environmental, health, safety and security requirements provided for in **Exhibit 9 EHS Program**.

2.6.13. Obligation to observe Rules

Contractor shall place its employees and any subcontractors employed under a written obligation to observe the safety and discipline rules in force at that location and **Contractor** shall clearly mark the rooms and areas used by it with its company name.

2.6.14. Acceptances by Authorities

Contractor shall carry out, or have carried out, acceptances by authorities (*Behördenabnahmen*).

2.6.15. Health and Safety Coordinator

Contractor shall appoint and commission the services of a health and safety coordinator (HSC), at its expense, pursuant to the Construction Site Regulations (*Baustellenverordnung*), VBG 1 and of the Industrial Safety Law (*Arbeitsschutzgesetz*). Moreover, **Contractor** shall provide suitable training for his personnel in all health and safety requirements, including, but not limited to, disposal of hazardous or toxic waste. **Contractor** shall not remove the safety and health engineer prior to completion of all and any **Works** on the site. This shall not be prior to remedying – and formally accepting by **Company** that the defects had properly been remedied – all defects which had been detected in the course of the final acceptance. **Contractor** may, upon **Company's** prior written consent, appoint another person as health and safety coordinator.

2.6.16. Clean Site

The **Site** must be kept tidy, in accordance with accident prevention regulations, for the entire duration of the **Works**. Rubbish and packaging material is generally to be disposed of immediately. Rubbish containers shall be emptied regularly. In particular, care shall be taken to ensure that there is no lasting impact on subsequent works from rubbish, dust and other contamination. The **Site** is generally to be kept clean both inside and outside. The **Site** shall be cleaned to the extent provided for in the clean protocol (**Exhibit 10 Clean Protocol**).

2.6.17. **Construction Supervisor**

The construction supervisor's rights and obligations pursuant to the Building Regulations of Saxony (*sächsische Bauordnung*) apply to the **Contractor. Company** shall be notified of the name, address and contact details of the construction supervisor in good time and may only object to such person for good cause.

2.6.18. **Clean Roads**

Public roads and works roads shall be kept clean at all times, with any soiling to be cleaned up immediately.

2.6.19. **Security**

Contractor shall be solely and completely responsible for, and shall establish and maintain, the security of the **Site**, including protection of personnel, the work and materials.

3. **Remuneration**

3.1. **Lump Sum Price**

As consideration in full for the **Works** to be executed and all obligations of **Contractor** under this **Agreement Company** shall pay to **Contractor** a fixed lump sum (*Pauschalpreis*) of Euro 380,500,000.00 plus VAT as applicable from time to time.

The lump sum price shall be fixed up to and including final acceptance of the entirety of **Works** (*Der Pauschalpreis gilt bis einschließlich der Schlußabnahme der Gesamtleistung*).

The parties acknowledge and confirm that the payments to be rendered under the letter of intent of May 16, 2003 as amended under the letters of August 13, 2003 and November 3, 2003 shall form part of the aforementioned lump sum and no additional remuneration shall be paid for these works and services which shall form part of the **Works**.

3.2. Payments on Account

Contractor shall be entitled to payments on account as provided in **Exhibit 7 Payment Schedule**. All payments except for the final payment shall be considered payments on account (*Abschlagszahlungen*) and shall not be deemed to signify or imply acknowledgement (*Anerkenntnis*) or acceptance of the **Works** to which the particular payment on account relates. Invoices regarding payments on account (*Abschlagsrechnungen*) shall – to the extent provided for in no 10.1 and if the respective underlying **Works** were completed - become due for payment within 45 days from being received by **Company**.

On **Company**'s request **Contractor** shall – within one week from receipt of the request – provide **Company** with invoices on account relating to **Works** which **Company** requests to be invoiced.

If mutually agreed upon by the parties **Contractor** has the right to submit to **Company** a partial final invoice (*Teilschlußrechnung*) relating to parts being subject to prior use or partial acceptance, provided that such partial final invoice does not constitute acceptance or transfer of risk to **Company** (unless provided otherwise in this **Agreement**).

3.3. German Income Tax Act

The parties clarify that the remuneration to be paid under this Agreement is subject to the provisions under section 48 German Income Tax Act (*Freistellungserklärung nach § 48 Einkommenssteuergesetz*), including the deduction provided for therein, to the extent applicable.

3.4. Presupposition for Payments becoming due

No payment whatsoever shall become due prior to **Contractor** submitting to **Company** the performance guarantee provided for in no. 10.2, the refined lump sum price estimate provided for in no. 4 and **Contractor** submitting to **Company** a declaration (*Freistellungserklärung*) meeting the requirements of section 48 German Income Tax Act (*Einkommenssteuergesetz*) or a declaration – justified - that **Contractor** will not submit such declaration.

Except for the first payment on account of Euro 10,800,000.00 (plus VAT as applicable from time to time) no payment whatsoever shall become due prior to an equity injection security (*belastbare Durchfinanzierungszusage* being submitted to **Company**).

4.

Changes

Company shall be entitled to – in writing – request **Contractor** to execute changes or additional works, services and deliveries (“**Additional Works**”). Such changes or **Additional Works** shall be executed even if at the time of the written request agreement on the impact of the change or the **Additional Works** on the remuneration to be paid to **Contractor** has not been reached. In that case the impact on the remuneration shall be determined within a reasonable time from the **Company**’s request to execute changes or **Additional Works**.

The execution of changes or **Additional Works** prior to an agreement on the impact on the price shall not lead to a detrimental financial impact on **Contractor**. However, **Contractor** shall, prior to the execution notify **Company** in writing of the price impact, otherwise **Contractor** shall not be entitled to an increase of the remuneration.

If an order of **Company** for changes or **Additional Works** leads to the project being held up, interrupted or an extension of time, **Contractor** shall notify **Company** in writing prior to the commencement of the execution of the changes or of the **Additional Works** on the – fifth (5) working day from receipt of the written request. If **Contractor** fails to give such written notification in time, **Contractor** shall not be entitled to an extension of time.

Unless provided otherwise in this **Agreement** all provisions relating to **Works** and the execution of **Works** under this **Agreement** shall also apply to changes or **Additional Works**.

Company is, at any time, entitled to request **Contractor** not to execute certain **Works** or to reduce the scope of work. In this case **Contractor** is obliged to immediately stop **Works** which **Contractor** is requested not to execute. The **Parties** clarify that this does not lead to a reduction of the remuneration **Contractor** is entitled to for **Works** already executed (the Parties clarify that

works which are in progress are remunerated to the extent already carried out) in accordance with this **Agreement** prior to receipt of the request. Only in case and to the extent **Contractor** is in the course of duly executing the **Works** obliged to remunerate subcontractors or render other payments to third parties, which remuneration or payment can not be avoided (for example can be avoided since the change leads – in total - to an increased remuneration or payment) **Company** shall reimburse **Contractor** for such expenditures (such reimbursement shall be limited to the remuneration if the portion had be executed).

The **Parties** clarify that changes of quantities (*Massen* and *Mengen*) within the scope of work (the scope of work which relates to the lump sum provided for in no. 3.1) shall not lead to an adjustment of the remuneration.

The remuneration provided in no 3.1 of this **Agreement** shall – in case change or **Additional Works** are executed – be adjusted as follows:

4.1. Adjustment can be calculated based on lump sum price calculation

Contractor based the lump sum provided for in no. 3.1 on the lump sum price calculation attached as **Exhibit 11 Lump Sum Price Calculation**.

4.1.1. Works to be executed in addition

If due to a request for changes or **Additional Works** works, services or deliveries which are not part of the **Works** which form part of the wafer fabrication facility to be completed as described under no. 2.1 but which are equal to items, other parts of the **Works** or components etc. covered by the lump sum price calculation or the refined lump sum price calculation are requested to be executed and not part of the **Works** to be executed for the initial lump sum the remuneration is increased by the amount for the respective part of the change or **Additional Works** to be executed contained in the lump sum price calculation or, the refined lump sum price calculation (which based on and in line with the lump sum price calculation further details the lump sum price calculation and in which unit prices are allocated to all components, items etc.) if already delivered at the time of requesting the change or **Additional Works** underlying the works, services or deliveries to be executed or rendered in addition. The refined lump sum price calculation shall be submitted to **Company** by **Contractor** no later than November 30, 2003 and replace the the lump sum price calculation.

4.1.2. Works not to be executed

If due to a request for changes or **Additional Works**, **Works** covered by the lump sum price calculation are requested not to be executed, the **Works** to be executed for the initial lump sum the remuneration is reduced by the amount for the respective part of the **Works** not to be executed contained in the lump sum price calculation or the refined lump sum price calculation, if already delivered at the time of requesting not to execute **Works** or **Additional Works** underlying the works, services or deliveries to be executed or rendered in addition. The refined lump sum price calculation shall be submitted to **Company** by **Contractor** no later than November 30, 2003.

4.1.3. Changes leading to Reductions and Additions

If changes requested lead to reductions as well as additional works, services or deliveries, the price impact of additional works, services or deliveries the increase is determined under no. 4.1.1 and the price impact of reductions is determined by no. 4.1.2.

4.2. Adjustment can not be based on lump sum price calculation

If certain works, services or deliveries to be executed are not covered by the scope of work to be executed for the lump sum provided for in no. 3.1 and to the extent the adjustment of the price cannot be determined in accordance with no. 4.1 since the works, services or deliveries requested to be executed are not covered by the lump sum price calculation or the refined lump sum price calculation the price adjustment shall be determined in accordance with the following procedure which the **Parties** agree to follow without any detrimental time impact on the completion of **Fab X**:

Contractor shall - based on tender documents approved by **Company** - ask potential subcontractors for competitive bids (generally three) based on a lump sum approach for such works, services or deliveries. **Contractor** shall also be entitled to submit a bid. **Company** shall have the right to provide additional bids. Based on the bids - of which **Company** is provided with copies -

Contractor shall submit to **Company** a written proposal which bid **Contractor** considers most favorable for **Company** which proposal shall contain the underlying reasons.

Contractor is entitled to a fee of [***]* of the remuneration to be paid to the respective subcontractor (as general contractor's fee (*Generalübernehmerzuschlag*) and of [***]* of the remuneration to be paid to the respective subcontractor as lump sum for the indirect costs of **Contractor** in addition to the costs to be paid to the respective subcontractor in accordance to the respective subcontract.

The **Parties** clarify that not **Company** but **Contractor** shall be party to the subcontracts and that the provisions of this **Agreement** relating to subcontractors shall apply unless explicitly provided otherwise in this no. 4.2.

4.3. **Payments**

In case of reductions the respective reduction will be considered in the next invoice regarding a payment on account (*Abschlagsrechnung*) and the amount invoiced is reduced accordingly. In cases of increases of remuneration the respective increase shall be – in verifiable form and explaining the calculation of the increase and the basis thereof in detail – included in the invoice regarding the payment on account which relates to the **Works** the change or **Additional Works** relate(s) to.

In case of a termination of the entire **Agreement** under the termination provisions contained in no. 13.2 of this **Agreement**, **Contractor** shall be only entitled to the remuneration provided for in these termination provisions.

5. **Subcontracting/Personnel**

5.1. **Subcontracting**

Contractor shall be entitled to subcontract parts of the **Works** if and to the extent the following procedure is applied. Prior to entering in contracts with subcontractors **Contractor** shall inform **Company** in writing of **Contractor's**

* Confidential treatment has been requested for portions of this exhibit.

intention to subcontract giving **Company** the complete name and address of the proposed subcontractor and the part of the **Works** to be executed by this subcontractor. The **Contractor** shall not employ a proposed subcontractor if **Company** submits to **Contractor** in **writing** – and within three working days from being informed of name, address and part of work – an objection to employing the subcontractor and this objection is supported by good cause explained in writing in the objection letter.

In case such objection is supported by good cause, **Contractor** is not entitled to any additional remuneration because of the employment of a subcontractor other than the one initially proposed.

The **Parties** acknowledge that **Company** has not objected to employing the subcontractors contained in the list attached as **Exhibit 12 List of Subcontractors consented to.**

Subcontracting does not impact on **Contractor**'s liability and responsibility under this **Agreement**. The **Contractor** remains liable for all acts and omissions of the subcontractors which shall be persons or entities engaged by **Contractor** for the fulfillment of **Contractor**'s obligations (*Erfüllungsgehilfen des Contractors*). The **Contractor** shall use its best efforts in choosing subcontractors which are competent, capable and qualified to complete the Works to be executed by the respective subcontractor properly and in-time.

The **Contractor** explicitly affirms that its employees are paid at least minimum wages. The **Contractor** moreover affirms only to employ subcontractors and entities providing workers (*Verleiher i.S. des Arbeitnehmerüberlassungsgesetzes*) which equally compensate their employees by minimum wage. **Contractor** will – on demand – provide **Company** with the necessary documentation that **Contractor** as well as any subcontractor or entities providing workers have paid and will pay such minimum wage.

Contractor shall, simultaneously with signing this **Agreement**, sign the declaration attached to this **Agreement** as **Exhibit 13 Work Force Regulation** and shall impose on subcontractors at least the same obligations.

5.2.

Personnel

The **Contractor**'s personnel shall be appropriately qualified, skilled and experienced in their respective trades and occupations, as to ensure professional execution of the works. **Contractor** shall impose on all subcontractors the obligation to employ and use equally qualified, skilled and experienced personnel.

Company may require the **Contractor** to remove (or cause to be removed) any of **Contractor's** personnel, unless **Company** requires such removal unreasonably. **Contractor** shall impose on all subcontractors and the same obligation to remove (or cause to be removed) any of these subcontractors' personnel if **Company** reasonably so requires. **Company** shall have the right to inspect at any time if the **Contractor** and all subcontractors meet all applicable labor law requirements. Not meeting these requirements shall be considered a reason for termination for good cause.

Contractor shall not remove the key personnel listed below without prior written approval of **Company**.

<u>Name</u>	<u>Title/Position</u>
[***]*	Project Manager on site
[***]*	Deputy Project Manager
[***]*	Commercial Manager on site
[***]*	Executive Sponsor
[***]*	Executive Sponsor
[***]*	Executive Sponsor

The aforementioned key personnel - except Executive Sponsors - shall - except for times of vacation, holiday or illness - be present on **Site** at all time to ensure proper execution of the personnel's function and may not be used in other projects than the project underlying this **Agreement**.

The responsible person authorized to act on **Company's** behalf shall be [***]* and as substitute responsible person [***]*.

The responsible person authorized to act on **Contractor's** behalf shall be [***]* and as substitute responsible persons [***]*.

* Confidential treatment has been requested for portions of this exhibit.

Such responsible and substitute responsible persons shall be authorized to enter into binding agreements and to give binding declarations (*Willenserklärungen*) for and against the respective **Party** represented.

6. Formal Acceptance

6.1. Formal Acceptance

After completion of the whole of the **Works** to be executed including, but not limited to, the tests to be performed (being precondition to acceptance) and the submission of all documents related to the execution of this **Agreement**, the **Parties** shall carry out a formal acceptance (*förmliche Abnahme*) to be documented in a protocol signed by authorized representatives of both **Parties**.

6.2. No prior Acceptance

Only finally and formally accepting the whole of the **Works** to be executed, including but not limited to, the tests to be performed and the submission of all documents related to the execution of this **Agreement** shall constitute an acceptance and not if a certain time from the notification of the completion has expired, or if **Company** has begun to use the relevant part of the **Works**, **Fab X** or parts thereof. No other declaration (than the Acceptance Certificate) by **Company** or by anybody acting on behalf of **Company** or any third party (as a lender) than the formal final acceptance shall be considered an acceptance or having any impact of an acceptance.

The acceptance may not be withheld in case of minor defects (*unwesentliche Mängel*).

However, if **Company** desires to accept or use a certain part of the **Works** or a certain part of **Fab X** prior to this formal final acceptance, **Company** has the right to request **Contractor** to participate in (a) partial acceptance (s) which then has/have to take place within one week from **Company** being requested in writing. If such partial acceptance has been formally carried out the risk regarding those **Works** covered by the partial acceptance is – unless defects were not detected by **Company** or hidden at the time of the partial acceptance – transferred to **Company**. However, the limitation period for defects liability shall – in any case - not commence prior to the day after the day of final acceptance.

In case damages and defects are caused by **Company** due to any kind of activities **Contractor** shall not be liable for any impact resulting thereof.

If in the course of any acceptance defects are ascertained, **Contractor** shall be obliged to remedy these defects within 10 weeks from the date of acceptance, unless this time period is not reasonable (*angemessen*). This does not affect or limit the right of **Company** to refuse the formal final acceptance (or if a partial acceptance has been carried out in accordance with this **Agreement**, the partial acceptance) according to Sec. 12 no. 3 *VOB/B*.

No acceptance - whether partial or final - to be granted in accordance with this agreement shall be unreasonably withheld.

Shortcomings and defects identified in the course of an acceptance shall be noted in a mutually developed punch list

7. Milestones; Contractual Penalty

7.1. Milestones (*Vertragsfristen*)

The following milestones allocated to the respective independent assets shall constitute contractual terms in the meaning of sec. 5 no. 1 *VOB/B*:

a) **CUB Weathertight**

All **Works** necessary or expedient for reaching **CUB Weathertight** (*Fertigstellung der äußeren Hülle des Central Utility Building*) as defined in **Exhibit 14 Milestone Definitions** shall be completed on [***]* at the latest.

b) **Fab Weathertight and Airtight**

All **Works** necessary or expedient for reaching **Fab Weather- and Airtight** (*Fertigstellung der äußeren Hülle des Fab Gebäudes*) as defined in **Exhibit 14 Milestone Definitions** shall be completed on [***]* at the latest.

* Confidential treatment has been requested for portions of this exhibit.

c) **Fab X Ready for Equipment**

All **Works** necessary or expedient for reaching **Fab X Ready for Equipment** condition (which means that all independent assets of **Fab X** (Office, Spine, CUB and Fab) are ready for equipment as defined in **Exhibit 14 Milestone Definitions**) shall be executed on [***]* at the latest.

The **Parties** clarify that in case hindrances or other delays which **Contractor** is not liable for (*die Contractor nicht zu vertreten hat*) or in case of **Contractor** being entitled to additional time due to requests of **Company** to execute changes or **Additional Works** (if and to the extent **Contractor** proves that such change or **Additional Works** result in a delay), **Contractor** shall not be in delay for these days and the date at which the part of the **Works** underlying the relevant milestone are to be completed is postponed by the number of working days by which due to such hindrance, delay or additional time the execution is delayed (which is calculated by applying the critical path method), provided, however, that **Contractor** is – under this **Agreement** – entitled to claim such additional time. The **Parties** acknowledge and confirm that there could be substantial hindrances, delays and orders to execute **Additional Works** which could lead to (a) substantial postponement(s) which would not lead to the provisions of this **Agreement** regarding milestones and contractual penalties no longer being applicable (however, the date(s) of the respective milestone(s) shall be postponed in accordance to this no. 7.1).

7.2.

Contractual Penalty (Vertragsstrafe).

a) If **Contractor** is, due to **Contractor's** fault, in delay with meeting the milestone **CUB Weathertight** provided for in no. 7.1.a) of this **Agreement** for more than [***]*, **Company** shall be entitled to a contractual penalty of

- [***]*
- [***]*
- [***]*

* Confidential treatment has been requested for portions of this exhibit.

The total of any contractual penalty to which **Company** is entitled to for being in delay with meeting the milestone **CUB Weathertight** shall not exceed [***].*

- b) If **Contractor** is, due to **Contractor's** fault, in delay with meeting the milestone **Fab Weathertight and Airtight** provided for in no. 7.1.b) of this **Agreement** for more than [***], **Company** shall be entitled to a contractual penalty of

- [***]*
- [***]*
- [***]*

The total of any contractual penalty to which **Company** is entitled to for being in delay with meeting the milestone **Fab Weathertight and Airtight** shall not exceed [***].*

- c) If **Contractor** is, due to **Contractor's** fault, in delay with meeting the milestone **Fab X Ready for Equipment** provided for in no. 7.1.c) of this **Agreement** for more than [***], **Company** shall be entitled to a contractual penalty of

- [***]*
- [***]*
- [***]*

The total of the contractual penalty to which **Company** is entitled for being in delay with meeting the milestone **Fab X Ready for Equipment** shall not exceed [***].*

The Parties acknowledge and confirm that the entitlement to contractual penalty does not impact on **Company's** other or further rights or claims based on the delay, including, but not limited to, **Company's** right to claim compensation for damages because of such delay (*Verzugs- und/oder Verzögerungsschaden*) including, but not limited to, damage due to allowance not being granted (*Investitionszulagen*). These other or further rights or claims shall, however, be reduced by the amount of the contractual penalty to which **Company** is entitled.

* Confidential treatment has been requested for portions of this exhibit.

The parties acknowledge and confirm, that the contractual penalty **Company** is entitled to shall be reduced to the amount of the actual damage (*Verzugs- und/oder Verzögerungsschaden*) including, but not limited to, damage due to allowance not being granted (*Investitionszulagen*) caused by the delay if the milestone **Fab Ready for Equipment** is met despite one of or both of the other penalized milestones were not met. If the contractual penalty had already been paid by **Contractor** and is to be reduced in accordance with the preceding sentence **Company** has to reimburse **Contractor** accordingly.

The Parties clarify that **Company** may reserve its right to demand a contractual penalty (*Vorbehalt der Vertragsstrafe*) until the due date of the final invoice.

7.3. Further Milestones

In addition, **Contractor** is obliged to complete the following milestones (some of which are defined in **Exhibit 14 Milestone Definitions**) by the following dates:

<u>Milestone</u>	<u>Date</u>
Spine weathertight	[***]*
Office weathertight	[***]*
Office ready for Occupation	[***]*
Ready for Unrestricted Hook Up	[***]*

The fact that these milestones are not subject to contractual penalty does not impact **Contractor**'s responsibility for meeting these milestones or **Contractor**'s liability for damages, losses etc. resulting from **Contractor** culpably being in delay with punctually completing the relevant part of the **Works** necessary for complying with the relevant milestone. In case of hindrances or other delays which do not result from culpable conduct of **Contractor** or in case of **Contractor** being entitled to additional time due to orders of **Company** to execute **Additional Works**, the last two sentences of no. 7.1. shall be applied accordingly.

* Confidential treatment has been requested for portions of this exhibit.

7.4.

Schedule

Contractor shall – within two weeks from signing this **Agreement** – furnish to **Company** a detailed schedule based on the milestones provided for in this **Agreement** and on the critical path method showing all activities and **Works** to be executed and the time frame within which these activities and **Works** shall be executed as well as the implications and consequences of these activities and **Works**, especially the impact of each activity or work on each other. The time schedule to be provided within two weeks from signature of this **Agreement** shall be based on and reflect the preliminary time schedule attached as **Exhibit 15 Time Schedule**. If the project falls behind schedule the **Contractor** shall prepare and submit for **Company**'s approval a recovery plan showing such actions as may be required to restore the schedule. **Contractor** shall only be entitled to compensation for additional costs of these actions, and these costs shall only be considered reimbursable costs, if **Contractor** proves that falling behind the schedule was not due to **Contractor**.

7.5.

Force Majeure

Neither **Party** shall be liable for delays which are caused by events of force majeure. Occurrences beyond the control of the party affected shall constitute force majeure of such affected party, including, but not limited to, acts of governmental authority (excluding delays attributable to the party's delays or other fault and excluding proper exercise of the police power response to an improper act or omission of the affected party), unusually severe weather conditions (as defined in this section), strikes or other concerted actions of workmen (except to the extent caused by the affected party or persons or entities acting on the affected party's behalf (*Erfüllungsgehilfen*) and except to the extent that a strike had been announced in advance and provision could have been made to alleviate such strike's effects), fires, floods, explosions, riots, sabotage or shipwrecks (except to the extent such fires, floods, explosions, riots, sabotage, or shipwrecks were caused by the affected party or its agents, officers, representatives, subcontractors or vendors), war and rebellion. As used in this no. 7.5 of this **Agreement**, the term "unusually severe weather conditions" shall mean wheather condition that (i) **Contractor** establishes to **Company**'s reasonable satisfaction were not reasonable foreseeable and (ii) were sufficiently severe that thirty percent (30 %) of the work force employed on the **Site** were unable to work, and (iii) resulted in delay that affected the critical

path set forth in the schedule provided for in no. 7.4 of this **Agreement**. Notwithstanding anything herein to the contrary, events of “force majeure” shall not include the following: (I) delays caused by general economic conditions or (II) delays caused by open market conditions, such as inability to procure labor or materials in the open market. Insufficiencies in the design of **Fab X**, rejection by **Company** pursuant to this **Agreement** of any proposed subcontractor or material or absence of **Contractor**’s representatives or other personnel shall also not be considered as a just cause of delay. **Contractor** shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all material, items etc.. Therefore, delays by vendors in manufacture or delivery of materials, which delays are not caused by force majeure, or shortages of labor or materials resulting from general market conditions shall not be considered as a just cause of delay.

8. Distribution of Risk

Except otherwise provided in no. 6 the distribution of risk shall be exclusively governed by sections 644, 645 German Civil Code (*BGB*).

9. Defects Liability

9.1 Defects Liability

The limitation period for defects liability (*Gewährleistungsfrist = Frist in der Mängelansprüche verjähren*) shall be:

Wear and tear:	1/2 year
Electrical (electrical generating or transmitting equipment, such as transformers, switch gear, generators,, etc.):	two years
Rotating and fire exposed parts and bulbs:	one year
Piping and static as well as mechanical parts:	five years
Any other portion of the facility:	five years
Roof:	ten years

In case **Contractor** and **Contractor**'s subcontractors or any vendors agree on a longer limitation period such longer limitation period shall apply. The reference in sec. 13 no 5 *VOB/B* to the limitation period in sec. 13 no 4 *VOB/B* shall be substituted by a reference to the limitation period provided for in this no. 9 of this **Agreement**. Section 13 no 4 *VOB/B* shall not apply. The limitations on the liability, especially on the liability for consequential damages, provided for in section 13 no. 7 *VOB/B* shall not apply.

9.2. Warranty.

Contractor shall warrant that all and any **Works** are executed in accordance with this **Agreement** and that the result to be achieved (*Werkerfolg*) is in accordance with this **Agreement**.

9.3. Warranties

Contractor has carefully examined and is aware of the location of all and any means for supply of **Fab 30** and of **Fab X** and for disposal of substances, including, but not limited to, water, bulk gas, gas, light or electromagnetic signals or impulses and energy, including, but not limited to, utilities and all and any means for disposal of such or like substances. **Contractor** is aware of all and any conditions which could have an impact, including, but not limited to, detrimental impact by vibrations, on the proper operation of **Fab 30** and/or on the proper production, including, but not limited to, the production of semiconductor processors, within **Fab 30**, including, but not limited to, those which could, will or could arise or which will or could be caused by the execution of the **Works** (or by the execution of changes or Additional Works) to be carried out by **Contractor** or by subcontractor. **Contractor** has carried out all surveys necessary or expedient to examine and review all and any **Site Conditions**, including, but not limited to surveys with respect to subsurface conditions, the vibration risk, the impact of radar (*Radarverträglichkeit*) and all risks which could lead to an interruption or limitation of the production or could have a detrimental impact on a proper operation of **Fab 30** or **Fab X** or the unlimited, unrestricted and proper production, including, but not limited to, the production of semiconductor processors, within the **Fab 30** or **Fab X**.

Contractor warrants (i) that the work, the **Works**, any changes and **Additional Works** and the design shall satisfy **Company**'s requirements for

clean room air quality, process equipment (unless unknown by **Contractor**), vibration, particularity, air, water and other quality requirements of **Company**; (ii) that the execution of the **Works** and of any changes and **Additional Works** will not lead to any vibrations which affect, influence, disturb or have any other detrimental impact on the unlimited, unrestricted, and proper operation of **Fab 30** or **Fab X** or on the unlimited, unrestricted and proper production, including, but not limited to, the production of semiconductor processors, within **Fab 30** or **Fab X** and that the **Works** any changes and **Additional Works** or the execution of the **Works** any changes and **Additional Works** will not affect, influence, disturb or have any other detrimental impact on the unlimited, unrestricted and proper operation of **Fab 30** or **Fab X** or on the unlimited, unrestricted and proper production, including, but not limited to, the production of semiconductor processors, within **Fab 30** or **Fab X**; (iii) that **Contractor** has only employed and selected and will only use such means and methods which cannot affect, influence, harm or have any other detrimental impact on the unlimited, unrestricted and proper operation of **Fab 30** or **Fab X** or on the unlimited, unrestricted and proper production, including, but not limited to the production of semiconductor processors, within **Fab 30** or **Fab X**; (iv) that **Contractor** has carefully examined and reviewed any and all means and methods to be employed for the execution of the **Works** any changes and **Additional Works** to be executed under this **Agreement**; (v) that **Contractor** has examined and knows all and any facts, events and circumstances which might be relevant to, or could affect, influence, harm, or have any other detrimental impact on, the unlimited, unrestricted and proper production, including, but not limited to, the production of semiconductor processors, within **Fab 30** or **Fab X**, (vi) that **Contractor** has performed all and any surveys and tests necessary to examine and know all and any **Site Conditions**; (vii) that there are no **Site Conditions** which could be relevant to, or affect, influence, harm or have any other detrimental impact on the proper execution of, the **Works** any changes and **Additional Works** to be performed under this **Agreement**, or which might be relevant to, or could affect, influence, harm or have any other detrimental impact on the proper operation of **Fab 30** or **Fab X** and the unrestricted, unlimited and proper production, including, but not limited to, the production of semiconductor processors, within **Fab 30** or **Fab X**, (viii) that **Contractor** has carefully examined the Site and is aware of the location of any means through which **Fab 30** or **Fab X** is or will be supplied, including, but not limited to, the supply with water, bulk gas, other gas, electricity, light or electromagnetic signals or impulses, including, but not limited to, utilities and all any means for the disposal of such or like substances, (ix) that - unless

agreed upon otherwise between the **Parties** - the **Works** any changes and **Additional Works** will not lead to any vibrations exceeding 250 microinch/sec for ATPC and 320 microinch/sec Malab for and that **Contractor** is responsible for all **Site Conditions**.

If mutually agreed upon between the parties, **Contractor** shall be granted defined shut down periods, if and to the extent such shut downs are absolutely necessary for proper execution of the **Works**. Such shut downs may only be granted, if and to the extent the operation of and production within **Fab 30** is impacted to the lowest degree possible.

10. Securities

10.1. Retention

Company may retain from any payment to be made under this **Agreement** an amount equal to a total of [***]* of the gross remuneration due at the relevant time. Therefore, **Company** is only obliged to pay [***]* of the amounts which are due under invoices submitted in accordance with this **Agreement**. At the time of final formal acceptance **Company** may retain this amount as defects liability security (*Gewährleistungssicherheit*). **Company** will pay **Contractor** said amount retained - to the extent not used in accordance with this **Agreement** to remedy defects – (i) at the expiration date of the defect liability period (*Gewährleistungsfrist = Frist in der Mängelansprüche verjähren*) or (ii) at the date of **Contractor** furnishing a defects liability bank guarantee (*Gewährleistungsbürgschaft*) issued by a German bank or savings bank.

10.2. Performance Guarantee (Vertragserfüllungsbürgschaft)

The **Contractor** shall deliver to **Company** a performance guarantee (*Vertragserfüllungsbürgschaft*) meeting the requirements of sec. 17 VOB/B and conforming to the sample attached as **Exhibit 16 Performance Guarantee**. The guarantee shall be issued by a German bank or savings bank. The amount of this guarantee shall be [***]* of the gross remuneration. The guarantee shall secure

* Confidential treatment has been requested for portions of this exhibit.

the execution of all and any obligations of **Contractor** under this **Agreement** as well as furnishing a defects liability guarantee. If the performance guarantee has not been used, the **Company** shall return the performance guarantee after the date of final acceptance simultaneously (*Zug-um-Zug*) to the defects liability guarantee being furnished by **Contractor**. No payment whatsoever shall be due prior to handing over such guarantee.

10.3. Defects Liability Guarantee (*Gewährleistungsbürgschaft*)

If **Contractor** – after final acceptance – furnishes a defects liability bank guarantee (*Gewährleistungsbürgschaft*) to release the amount retained under no. 10.1. of this **Agreement**, this guarantee shall conform to the sample attached as **Exhibit 17 Defects Liability Guarantee** and meet the requirements of sec. 17 *VOB/B*. This defects liability bank guarantee shall – to the extent it has not been made use of in accordance with the provisions of this **Agreement** – be returned upon expiry of the limitation period for defects liability as provided for in no. 9 of this **Agreement**.

The amount of this guarantee shall be [***]* of the gross remuneration (total of the gross remuneration under no. 3.1 of this **Agreement**). However, **Contractor** has - upon expiry of the limitation period for the **Works** except for the part of the **Works** related to the roof the right to reduce this bank guarantee to [***]* (or the retention of no bank guarantee has been delivered) of the gross remuneration relating to the roof - by providing a bank guarantee of [***]* relating to the gross remuneration with respect to the roof simultaneously (*Zug-um-Zug*) to handing back the guarantee of [***]* of the gross remuneration (or the remainder thereof if of the bank guarantee has (partly) been made use of).

10.4. Assignment for Security Purposes

Contractor assigns for security purposes (*tritt sicherungshalber ab*) to **Company** all and any claims, including, but not limited to, claims related to defects liability (*Gewährleistungsansprüche* which includes *Mängelansprüche*), performance (*Erfüllungsansprüche*), against any or all (*einzelne oder alle*) of its subcontractors and other contractors, as architects engineers and the like, vendors and other persons or entities which **Contractor** employs for and related to fulfilling its duties under this **Agreement**. **Company** accepts this assignment.

* Confidential treatment has been requested for portions of this exhibit.

Company may only foreclose on this assignment to the respective subcontractor if the **Contractor** is – despite receipt of a written warning notice explicitly notifying **Contractor** that not remedying the delay despite the notice will lead to such foreclosure to the respective subcontractor - in delay with duties under this **Agreement**. The **Contractor** is obliged, in its name, to raise and enforce these claims assigned for security purposes until the relevant assignment is foreclosed on vis-à-vis the relevant person or entity (*geltendmachen in eigenem Namen und für eigenes Recht*).

10.5 **Security to be provided by Subcontractors**

Contractor shall oblige its subcontractors to deliver security corresponding to that provided for in no. 10.2 and 10.3 and shall assign the rights and claims for security purposes corresponding to no. 10.4.

11. **Copyrights (Urheberrechte)**

11.1. **Confirmation**

Contractor confirms that it holds all and any rights transferred to or made usable by **Company** under this **Agreement** and holds harmless and indemnifies **Company** from any result or impact of **Contractor** not being, or not being unlimited, holder of these rights.

11.2. **Rights to Ideas and other intellectual Property**

The **Parties** agree, confirm and acknowledge that, except for the copyright connected to the person developing an idea (the author) (*Urheberpersönlichkeitsrecht*), all copyrights and any other intellectual property rights related to **Fab X** shall be transferred to **Company**.

Therefore, **Contractor** agrees that all writings, software, drawings, designs, copyrightable material, improvements, developments, inventions and discoveries (collectively referred to as the “**Ideas**”) made conceived, developed, reproduced, produced or the like by **Contractor** (including **Contractor**’s subcontractors unless the respective subcontractor does not consent to such

transfer even if **Contractor** uses best efforts to get the respective transfer, in which case **Contractor** shall inform **Company** for giving **Company** the opportunity to take care of such transfer which **Contractor** shall support with all reasonable means) during the course of this **Agreement** and/or related to **Fab X** which relate in any manner to **Company's** business and/or the **Works** to be executed, or which **Contractor** may become associated with while executing the **Works**, shall only be used and utilized by **Company**, and **Contractor** hereby transfers to the **Company** all right, title and interest to use and utilize such **Ideas**.

Contractor agrees to assist **Company** in all and any proper way to enable **Company** to defend and enforce **Company's** aforementioned rights in and to such **Ideas** in any and all countries and jurisdictions, including the disclosure to **Company** of all pertinent information and data with respect thereto, and the execution of all applications, specifications, oaths, assignments and all and any other instruments which are reasonably necessary in order to apply for and obtain copyright protection, mask works registration and/or patents and in order to assign and convey to **Company**, **Company's** successors, assignees and nominees, sole and exclusive rights, title and interest in and to such copyrights, mask works, inventions, patent applications and patents.

Contractor's obligation to execute (or cause to be executed) instruments or papers such as those described in the above paragraph shall continue after completing all **Works**. If testimony or information related to any of the aforementioned matters or related to any interference and/or litigation, including, but not limited to, any administrative procedures, is required by the **Company** either prior to the completion of the **Works** or later on, **Contractor** agrees to give all information and testimony and do all things requested by **Company** that **Contractor** may lawfully do.

In the event the **Company** should not seek to obtain copyright protection, mask work registration or patent protection for any of said **Ideas** but should desire to keep the same secret, **Contractor** agrees to assist the **Company** in this and will not disclose any information as to the same except if, and if so to the extent, required by law or consented to in writing by the **Company**.

Contractor shall obtain the written agreement of all subcontractors that these subcontractors comply with this no 11.2 of this **Agreement** and especially that – to the degree provided for in the second paragraph of this no. 11.2 – any transferable right relating to copyright and **Ideas** regarding **Fab X** is transferred

to the **Company**. **Contractor** confirms that **Contractor** is able to transfer all such rights of third parties (including subcontractors) to the **Company** and indemnifies and holds harmless from any impact of these rights not having been properly transferred to **Company** in accordance with this **Agreement**.

Contractor agrees to obtain **Company**'s written approval prior to the inclusion of any third party intellectual property or pre-existing **Contractor** intellectual property, including, but not limited to, software and documentation, into any **Works** executed or product of **Works** executed or items furnished by **Contractor** under this **Agreement**. **Company** may decline to give such approval at **Company**'s sole discretion. **Contractor** ensures that **Contractor** has the right to include such third party intellectual property or pre-existing **Contractor** intellectual property in any **Works** executed and any products of **Works** executed and any items furnished by **Contractor** and that **Company** shall have the right to use such third party intellectual property or pre-existing **Contractor** intellectual property in any **Works** executed or any products of **Works** executed and any items furnished by **Contractor** under this **Agreement** to the same extent as **Company** may use such **Works** executed or product of **Works** executed or items furnished by **Contractor** pursuant to this **Agreement**.

Contractor ensures that the execution of **Works** and the transferred exclusive rights to use the **Ideas** does not infringe any third party proprietary rights.

In the event **Company**'s use of the **Ideas** in accordance with the provisions of this **Agreement** becomes subject to infringement proceedings initiated by a third party, **Contractor**, at **Company**'s option and in addition to **Company**'s other rights under the law, shall be obligated, irrespective of its culpable behaviour, to procure at **Contractor**'s expense the right for **Company** to use the **Ideas** in accordance with the provisions of this **Agreement**. **Company** may set a reasonable period of time for **Contractor** to provide such remedy and in case **Contractor** does not procure the right for **Company** to use the **Ideas** within the period set **Company** shall have the right to procure the right for **Company** to use the **Ideas** on **Contractor**'s reasonable costs and to deduct the amount necessary for procuring the right for **Company** to use the **Ideas** from the remuneration **Contractor** is entitled to under this **Agreement**.

Upon **Company**'s request, **Contractor** shall, at **Contractor**'s reasonable cost, either itself defend or settle or provide any reasonable support for **Company** to defend or settle any legal dispute which is brought against **Company** on account of the alleged infringement of a third party proprietary right as a consequence of **Company**'s use of the **Ideas** in accordance with the provisions of this

Agreement. Contractor shall reimburse **Company** any reasonable costs and reasonable expenses arising out of or in connection with such a legal dispute and shall indemnify **Company** for any damages awarded against **Company** in such a legal dispute.

11.3. Payment included in Lump Sum

The **Parties** agree, clarify and acknowledge that the remuneration for the transfer and the assignment of these **Ideas** and copyrights and the aforementioned rights of **Company** is included in the lump sum remuneration provided for in no. 3.1. of this **Agreement**.

12. Lender

The **Parties** acknowledge and confirm that **Company** has the right to transfer this **Agreement** or assign claims or rights thereunder.

13. Termination

13.1. Termination Rights provided for in VOB/B

The **Parties** may terminate this **Agreement** in accordance with the provisions of VOB/B.

13.2. Extraordinary Termination Right

In addition, **Company** shall have an extraordinary termination right if the co-operation agreement between the Free State of Saxony, Advanced Micro Devices Inc. and M+W Zander Fünfte Verwaltungsgesellschaft mbH of November 20, 2003 (Kooperationsvertrag vom 20. November 2003) may be terminated under the termination rights provided for in the co-operation agreement or if the co-operation agreement does not become valid until March 31, 2004.

In case of exercising such extraordinary termination right Contractor shall be entitled to the remuneration agreed upon for Works executed (inclusive profit if profit was included in the remuneration due until the termination date), remuneration for commitments vis-à-vis third parties which Contractor made in the due course of performing this Agreement but only if and to the extent Contractor proves that the respective commitment or the resulting remuneration can not be avoided or reduced. Contractor shall not be entitled to any profits relating to the works not executed. Section 649 German Civil Code (*BGB*) shall not apply.

14. **Liability.**

14.1. **Contractor generally liable**

The **Contractor** shall be liable for the execution of the **Works** and the compliance with all and any provisions of this **Agreement**.

Contractor shall comply with all statutory, legal, regulatory, accident insurance or other rules etc., e.g. dangerous goods regulations (*Gefahrgutverordnung*) and all environmental provisions which apply to this **Agreement**, the execution of the **Works** and the product (*Werkerfolg*) to be completed.

Contractor shall indemnify and hold harmless **Company** (including its representatives and employees) from and against all claims, damages, losses, expenses and the like arising from, or in connection with or related to this **Agreement**, the execution of the **Works** and the product (*Werkerfolg*) to be completed.

Contractor shall be responsible for **Contractor's** subcontractors and all and any conduct of **Contractor's** subcontractors. **Contractor's** subcontractors shall be persons or entities engaged by Contractor for the fulfillment of **Contractor's** obligations (*Erfüllungsgehilfen des Contractors*).

14.2. **Liability for Damages**

The **Parties** explicitly acknowledge and clarify that this includes the obligation of **Contractor** to indemnify and hold harmless Advanced Micro Devices Inc., AMD Saxony LLC & Co. KG, AMD Saxony LLC, AMD Saxony Holding

GmbH and AMD Saxony Admin GmbH and the officers and employees of Advanced Micro Devices Inc., AMD Saxony LLC & Co. KG, AMD Saxony LLC, AMD Saxony Holding GmbH and AMD Saxony Admin GmbH from and against all claims, damages, losses, expenses and the like arising from, or in connection with or related to, this **Agreement** or the execution of the **Works** regardless of whether Advanced Micro Devices Inc., AMD Saxony LLC & Co. KG, AMD Saxony LLC, AMD Saxony Holding GmbH and AMD Saxony Admin GmbH have, because of such claims, damages, losses, expenses and like, claims against **Contractor** or not (and regardless whether these claims, damages, losses, expenses and the like refer to **Fab 30** or **Fab X**). **Contractor** shall - in accordance with other agreements - put **Company**, Advanced Micro Devices Inc., AMD Saxony LLC & Co. KG, AMD Saxony LLC, AMD Saxony Holding GmbH and AMD Saxony Admin GmbH in the economic position in which they would have been without the detrimental impact of such conduct. Advanced Micro Devices Inc., AMD Saxony LLC & Co. KG, AMD Saxony LLC, AMD Saxony Holding GmbH and AMD Saxony Admin GmbH shall have rights on their own under this no. 14 of this **Agreement** (*echter Vertrag zu Gunsten Dritter*).

The **Parties** clarify that this is not supposed to create a liability which is not dependent on **Contractor**'s culpable conduct (*verschuldensunabhängige Haftung*) unless created outside this 14.2.

14.3. Limitations on Liability.

The overall liability of **Contractor** shall, as exception to 14.1, be subject to the following:

- 14.3.1. If and to the extent damage occurs outside the **Site** as defined in Recital A and is not related to the execution of the **Works** under this **Agreement** and such damage does not result from gross negligent or intentional conduct of **Contractor** the liability of **Contractor** for such damages shall be limited to the insurance coverage amounts provided for in no. 14.4 ([***]* per occurrence and of [***]* per calendar). If the insurance company does not compensate the damage, **Contractor** shall in all cases be obliged to compensate **Company** for the damage to the extent that **Company** receives in total up to a maximum of [***]*. If the insurance company had paid more than [***]* but refuses to pay due to **Contractor**'s breach of the insurance contract **Contractor** shall pay to

* Confidential treatment has been requested for portions of this exhibit.

Company the entire amount **Company** would have received without such breach. **Contractor** shall assist **Company** in all and any proper way to enable **Company** to be reimbursed in accordance to the first sentence of this no. 14.3.1. **Contractor** assigns to **Company** (and **Company** accepts this assignment) all and any claims related to **Company**'s damages against third parties exceeding the amounts payable (by **Contractor** and/or insurance company) to **Company** under sentences 1-3 of this no. 14.3.1 and **Contractor** shall assist **Company** in all and any proper way to enable **Company** to enforce such claims.

There shall be no limitation on **Contractor**'s liability for damages resulting from **Contractor**'s gross negligent or intentional conduct.

- 14.3.2. If and to the extent consequential damage, e.g. loss of profit, loss of production, loss of use, loss of interest, plant downtime costs, occurs and does not result from gross negligent or intentional conduct the liability of Contractor shall be limited to [***]*. **Contractor** assigns to **Company** (and **Company** accepts this assignment) all and any claims related to **Company**'s damage against third parties exceeding the amounts payable (by **Contractor**) to **Company** under the first sentence of this no. 14.3.2 and **Contractor** shall assist **Company** in all and any proper way to enable **Company** to enforce such claims.

There shall be no limitation on **Contractor**'s liability for damages resulting from **Contractor**'s gross negligent or intentional conduct.

- 14.3.3. The **Parties** clarify and confirm that the amount of damages **Company** shall be entitled to in case of delay shall be limited to a maximum of the potential maximum amount of contractual penalties [***]*. The Parties clarify that such damage includes, but is not limited to damage resulting from delays (*Verzögerungs- und Verzugsschäden*) including, but not limited to, all and any losses due to allowances not being granted (*Verluste dadurch, daß Investitionszulagen nicht gewährt wurden*).

Contractor assigns to **Company** (and **Company** accepts this assignment) all and any claims against third parties related to **Company**'s damage exceeding any amounts payable (by **Contractor**) to **Company** under sentences 1-2 of this no. 14.3.3 and **Contractor** shall assist **Company** in all and any proper way to enable **Company** to enforce such claims.

* Confidential treatment has been requested for portions of this exhibit.

There shall be no limitation on Contractor's liability for damages resulting from Contractor's gross negligent or intentional conduct.

14.4. Insurance

Contractor shall conclude, and maintain during the entire term of this Agreement, a liability insurance (*Haftpflichtversicherung einschließlich Betriebshaftpflichtversicherung, Bauwesen- und Montageversicherung sowie Umwelthaftpflichtversicherung*) of a coverage of not less than Euro 30,000,000.00 occurrence and of Euro 60,000,000.00 calendar year each.

This insurance shall also cover damages caused by persons or entities engaged by **Contractor** for the fulfillment of **Contractor**'s obligations (*Erfüllungsgehilfen des Contractors*, e.g. employees, legal representatives or subcontractors).

Company shall be named as co-insured (*zusätzlicher Versicherter*).

Contractor guarantees and confirms that it will always - and in time – pay the premiums and other amounts to keep the said insurances valid and in force.

Contractor shall oblige the insurance companies to notify **Company** in case **Contractor** does not meet **Contractor**'s obligations under the insurance policies and in case of changes with respect to the insurance policy. In this case **Company** shall have the right to pay the amounts due and to deduct these amounts from any payments to be rendered to **Contractor** under, or connected to, this **Agreement**.

The **Parties** shall – on request of either **Party** – in good faith enter into negotiations with respect to mutually agreed reasonable amendments to the insurance contract.

14.5. Nature of Company's Approval

Notwithstanding any review, revision, comment or approval by **Company** of, or failure to review, revise, comment or approve, any of the **Works** or any **Design Document**, other documents, specifications, drawings, data, information, sheets, letters, materials etc. of **Fab X**, **Contractor** shall remain solely responsible for all **Works**, the execution thereof and all obligations under this **Agreement**.

14.6.

Contractor's Responsibility for Construction Means

Contractor shall be solely and completely responsible for all construction means, methods, techniques, and procedures for providing adequate safety precautions and coordinating all portions of the **Works** under the **Agreement**, including without limitation implementing an effective safety program as required by **Exhibit 9 EHS Program**. In no event shall the lack of objection by **Company** to any action or inaction upon the part of **Contractor**, be construed to make **Company** in any manner whatsoever responsible, e.g. for **Contractor's** construction means, methods, techniques, or procedures.

15.

Identification

Contractor shall meet the identification standards set by **Company** and all of **Contractor's** officers or employees shall display proper identification at all times while entering the **Site** or while on the **Site**. Moreover, **Contractor** shall impose the same obligations on **Contractor's** subcontractors and on anybody involved in relation to the execution of this **Agreement**.

16.

Liens (Rechte Dritter)

No item, material, component etc. used by **Contractor** in the course of executing the Works shall be subject to rights of third parties (e.g. *Eigentumsvorbehalt* or *Pfandrecht*).

17.

Confidentiality

The **Parties** shall treat this **Agreement** and any details of the **Agreement** and the **Works** under the Agreement as well as all details of **Fab X** and the operation of, and production within, **Fab X** and all information gathered in the course of executing this **Agreement** in confidence except to the extent necessary to carry out obligations under it or to comply with applicable law. Moreover, **Contractor** shall impose the same obligations on **Contractor's** subcontractors and on anybody involved in relation to the execution of this **Agreement**.

In addition, **Contractor** shall meet, and shall impose on all persons acting on **Contractor**'s behalf the obligation to meet, the confidentiality requirements provided for in this **Agreement**.

The **Parties** clarify that the confidentiality standards relating to C 4 process or building related to C 4, of which **Contractor** is aware shall be obeyed at any time. **Contractor** shall make all subcontractors to also meet these confidentiality standards. The **Parties** shall cooperate in good faith to comply with confidentiality standards of third parties related to C 4.

The confidentiality obligations of **Contractor** shall include, but not be limited to, the following:

- a) All communications and information obtained by **Contractor** from **Company** relating to this **Agreement**, and all information developed by **Contractor** under this **Agreement**, are confidential ("Confidential Information"). Without the prior written consent of **Company**, **Contractor** shall neither divulge to, nor discuss with, any third party either **Works** executed hereunder, or any **Confidential Information** in connection with such **Works**, except as required by law or, upon consultation with **Company**, necessary for the execution of this **Agreement** unless **Company** objects for good cause. Prior to any disclosure of such matters, whether as required by law or otherwise, **Contractor** shall inform **Company**, in writing, of the nature and reasons for such disclosure. **Contractor** shall not use any **Confidential Information** obtained from **Company** for any purpose other than the performance of this **Agreement**, without **Company**'s written prior consent.
- b) The foregoing obligations shall not apply to the extent that the **Party** which has received the **Confidential Information** can show that such **Confidential Information** of the disclosing **Party** (i) was in the possession of the receiving party or known to it before receipt from the receiving **Party**, or (ii) has become generally known through no fault of the receiving **Party**, or (iii) was legally disclosed to the receiving **Party** by another person without restriction, or (iv) was independently developed by the receiving **Party**, or (v) had to be revealed in accordance with statutory or administrative provisions, or (vi) was revealed by the receiving **Party** after prior written consent of the disclosing **Party** which is deemed to be given to the extent reasonably necessary for financing.

-
- c) In the case of **Contractor** subcontracting in accordance with no. 5.1, **Contractor** may disclose to any subcontractor, or **Company** approved third parties, any information otherwise subject to above (a) that is reasonably required for the performance of the subcontractor's work. Prior to any such disclosure, **Contractor** shall obtain the respective subcontractor's written agreement to the requirements of above (a) and shall provide a copy of such agreement to **Company**. Disclosing information reasonably required for the performance of the subcontractors work to nominated subcontractors as listed in no. 5.1 shall be deemed to be consented to by **Company**.
 - d) **Contractor** agrees that it shall not publish or cause to be disseminated through any press release, public statement or marketing or selling effort any information which relates to this **Agreement** without the prior written approval of **Company**.
 - e) At the completion of the execution of the **Works**, **Contractor** shall return to **Company** all written materials constituting or incorporating any **Confidential Information** obtained from **Company**. Upon **Company**'s specific approval, **Contractor** may retain copies of such materials, subject to the requirements of above Subsection a).

18. Section 648 BGB not applicable

Section 648 German Civil Code (*BGB*) shall not be applicable.

19. Law and Jurisdiction Miscellaneous

This **Agreement** shall be governed by and construed in accordance with the laws of the Federal Republic of Germany except for the provisions regarding conflict of laws (*Internationales Privatrecht*) and the CISG.

Any change or amendment of this **Agreement** shall be in writing. This also applies to an change or amendment of the clause that changes or amendments shall be in writing.

All notices to be given under or related to this **Agreement** shall be in writing.

Contractor explicitly warrants that it has not directly or indirectly offered or given, and will not offer or give, to any employee, agent, or representative of Company any cash or non-cash gratuity or payment with a view toward securing any business from **Company** or influencing such person with respect to the conditions or the performance under any contracts (including this **Agreement**) with or order from **Company**, including without limitation this **Agreement**.

The **Parties** submit, with respect to any disputes arising in connection with this **Agreement**, to the exclusive jurisdiction of the courts of *Dresden*, as far as legally permissible.

If a clause of this **Agreement** is or becomes void, the other clauses of this **Agreement** shall not be affected by such invalidity. The **Parties** shall agree on a clause having the same or a similar economic effect as the void clause to achieve the economic purpose of the void clause.

The **Parties** clarify that (unless agreed otherwise in this **Agreement**) if and to the extent Exhibits are not prepared at the time of signing this **Agreement** or not finalized at the time of signing this **Agreement** the **Parties** shall in good faith and in good time agree on the contents of such Exhibit not prepared or if an Exhibit is not finalized the **Parties** shall in good faith and in good time finalize the Exhibit. The validity of this **Agreement** shall not be impacted by such missing or not finalized Exhibits.

If any deviation between the English terms in this **Agreement** and the German terms or explanations to such English terms occur, the German terms or explanations shall prevail for the interpretation of this **Agreement**.

20.

Condition Subsequent

This **Agreement** is subject to the condition subsequent (*auflösende Bedingung*) that to the Co-operation Agreement between the Free State of Saxony, Advanced Micro Devices Inc. and M+W Zander Fünfte Verwaltungsgesellschaft mbH of November 20, 2003 (Kooperationsvertrag vom 20. November 2003) is consented to by the supervisory board of Jenoptik AG and consented to by the supervisory board of M+W Zander Holding AG by December 15, 2003. If such condition subsequent occurs (*Eintritt der auflösenden Bedingung*) the provisions under no. 9, 11, and 17 shall survive this **Agreement** and any claims by Contractor (except for claims under the

letter of intent of May 16, 2003 as amended under the letters of August 13, 2003 and November 3, 2003) of shall be governed by section 812 sq. (*fortfolgende*) German Civil Code (*BGB*).

Company

Dresden, /s/ Hans-Raimund Deppe

Contractor

Dresden, /s/ Helmut Laub

Cooperation Agreement
(hereinafter referred to as the “**Agreement**”)

between

1. **The Free State of Saxony**, represented by the Saxon State Ministry of Finance and the Saxon State Ministry for Economic Affairs and Labor, represented by the Minister Dr. Horst Metz and Undersecretary Mrs. Andrea Fischer
- hereinafter referred to as “**Saxony**” -
and
2. **Advanced Micro Devices, Inc.**, One AMD Place, Sunnyvale, CA 94088, USA
- hereinafter referred to as “**AMD**” -
and
3. **M+W Zander Fünfte Verwaltungsgesellschaft mbH**, Lotterbergstr. 30, 70499 Stuttgart, entered under HRB 23351 in the Commercial Register of the Stuttgart Local Court (Amtsgericht)
- hereinafter referred to “**M+W**” -

Saxony, AMD and M+W will each be hereinafter referred to as a “**Party**” and together as the “**Parties**”.

*Confidential treatment has been requested for portions of this exhibit. The copy filed herewith omits the information subject to the confidentiality request. Omissions are designated as [***]. A complete version of the exhibit has been filed separately with the Securities and Exchange Commission.*

Contents

Preamble		3
§ 1	Objectives	4
§ 2	Formation of a Joint Undertaking	5
§ 3	Evaluation of the Joint Undertaking	5
§ 4	Capital Contribution; Holding Company	6
§ 5	Financing	10
§ 6	Grants and Allowances	12
§ 7	Counter Guarantees	12
§ 8	Accession of an Additional Industrial Partner	12
§ 9	Research and Development	13
§ 10	Agreement on Acceptance / Cost Plus Agreement	13
§ 11	Service Agreements	14
§ 12	Arbitrator	14
§ 13	Non-Discrimination	15
§ 14	Warranty by AMD	15
§ 15	Liability	15
§ 16	Interest	16
§ 17	EU Reservation	16
§ 18	Conditions Precedent	16
§ 19	Duration and Termination	17
§ 20	Confidentiality	18
§ 21	Responsibility for Costs and Expenses	20
§ 22	Press Release	20
§ 23	Arbitration Agreement	20
§ 24	Final Provisions	21

PREAMBLE

The maintenance and development of Saxony as a center for microelectronics, in particular, of Dresden as a high-technology location, is a top priority political and structural goal of Saxony, in order to maintain existing and secure new qualified jobs. AMD intends to build a new facility in Dresden for the production of 300mm silicon wafers on which integrated circuits, particularly for microprocessors, will be manufactured (the "Wafers"). In addition to production, own research and development on a considerable scale to develop up to suitability for industrial production semiconductor manufacturing technology will be carried out at the new facility.

In December 2002, AMD entered into an extensive agreement with IBM for joint development (the Joint Development Agreement, hereinafter referred to as the "JDA") of a technological basis for the production of chips for high-performance products of the future. The JDA encompasses cooperation on the 65- and 45 nm technology generations with the possibility of even smaller sized structures. This groundwork will be carried out on the basis of the 300 mm Wafers. AMD intends to use the results of this groundwork under the JDA in a new wafer production facility in particular for micro processors to be built in Dresden (hereinafter referred to as "Fab X") with the support and participation of Saxony, to develop them to the industrial production stage and to manufacture them. The manufacturing technology is intended to be adjusted, by continuous and rapid improvement, to the requirements of mass production and further developed in accordance with market requirements. The management consultancy Arthur D. Little GmbH has on the instructions of Saxony examined and confirmed the technical and economic feasibility of Fab X in a report (hereinafter referred to as the "ADL Report").

Fab X 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 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 [***]*. Up to approx. 1,035, and [***]* up to 1,400 -qualified new jobs are intended to be created in Fab X. Additional jobs at suppliers will also result. Saxony attaches particular importance on the fact that the technological and financial basis of Fab X is secured as much as possible and will be further developed in Fab X and furthermore that its capital bears

* Confidential treatment has been requested for portions of this exhibit.

reasonable interest (“**stand alone**”). A declaration of intent was entered into between Saxony and AMD on June 4, 2003, concerning the cooperation. The said declaration of intent is attached as **Appendix A** to this Agreement, the purpose of which is to implement the declaration of intent.

Fab X is intended to be built and operated by a special purpose entity in the form of a German limited partnership. The Parties intend to hold capital interests in such entity, and it is up to them whether they hold such interests directly or through separate holding companies, however, the contribution of Saxony and of M+W will partly be made in the form of a limited partner participation, and partly in the form of a typical silent partner participation. In addition, M+W simultaneously enters into a general contractor’s agreement for the construction of the necessary building modules and infrastructure. The general contractor’s agreement is attached as **Appendix B** hereto.

§ 1 Objectives

- 1.1 The Parties intend to cooperate as direct or indirect partners for the purpose of the construction and operation of Fab X as further set out in the draft limited partnership agreement attached hereto as **Appendix 1.1(a)** (the “**Limited Partnership Agreement**”), and to create the financial bases for this. Besides, in accordance with the draft agreement attached hereto as **Appendix 1.1(b)** on the formation of a silent partnership (the “**Silent Partnership Agreement**”), Saxony and M+W will participate as typical silent partners in the joint undertaking (both agreements hereinafter together referred to as the “**Partnership Agreements**”). With respect to the limited partner participations and the silent partner participations of Saxony and M+W, the purchase agreements which are attached in their draft versions as **Appendix 1.1(c)** and **Appendix 1.1(d)** will be executed.
- 1.2 The joint undertaking is to be provided within the framework of this Agreement with the tangible and intangible resources and personnel so that a stand-alone operation of Fab X is ensured to the extent possible and financially reasonable. This also includes the License Agreement attached as **Appendix 1.2**.
- 1.3 The details of the project including the expected investment costs shall be in accordance with the project description attached hereto as **Appendix 1.3**.

§ 2 Formation of a Joint Undertaking

2.1 AMD has formed a limited liability partnership Limited Liability Company & Co. KG for the realization of the project.

2.2 The joint undertaking will be conducted in the name of AMD Fab X Limited Liability Company & Co. KG (hereinafter referred to as “**AMD Fab X**”).

2.3 Immediately upon taking effect of this Cooperation Agreement (see § 18), Saxony and M+W shall, in accordance with the Limited Partnership Agreement attached hereto as **Appendix 1.1(a)**, join AMD Fab X as limited partners with legal and economic effect as of the day on which they are both entered in the Commercial Register. The Parties agree to execute the Limited Partnership Agreement of Fab X and to effect the registration in the Commercial Register immediately upon taking effect of this Cooperation Agreement. The Parties agree to sign the Silent Partnership Agreement attached hereto as **Appendix 1.1(b)** immediately upon taking effect of this Cooperation Agreement.

2.4 The capital contributions of the Parties will amount to a total of € 905 million, as specified in more detail in Section 4.

2.5 AMD Fab X LLC will conduct the business of AMD Fab X as the general partner with sole power of management and representation. In addition to those mentioned in Section 2.3 above, AMD Fab X Holding GmbH and AMD Fab X Admin GmbH shall be limited partners of AMD Fab X. The conduct of the operative business shall be the sole responsibility of the general partner AMD Fab X LLC, subject to the Limited Partnership Agreement. The other general partner will be a German limited liability company [GmbH] whose shares will be held by Saxony or the Saxony Holding Company (“**Second General Partner**”); the Second General Partner shall have no power of management and no power of representation and will participate neither in the assets nor in the results of AMD Fab X.

§ 3 ADL Report

On the instructions of Saxony and on the basis of information and intended plans provided by AMD and AMD’s subsidiaries – in particular the business plan provided, ADL has prepared the ADL Report on the economic and technological feasibility. For reasons of strict confidentiality, the ADL Report is not

attached to this Agreement, but one copy each will be provided to Saxony as principal, AMD and M+W. Saxony will grant to AMD Fab X a right of co-use in the ADL Report. The ADL Report is to be treated with the strictest confidentiality within the recipients' organizations. AMD warrants that the information provided to ADL by AMD and AMD subsidiaries for the purpose of ADL preparing the expert opinion was given to the best of their knowledge and belief and that the business plan was drawn up according to recognized commercial principles. If the forecasts do not come to pass and/or the plans are not achieved, even though the information provided to ADL for the purpose of their preparing the report was correct and complete to AMD's best knowledge and belief and even though the business plan was drawn up according to recognized commercial principles, this shall not affect the reciprocal rights of the Parties.

§ 4 Capital Contributions, Holding Company

4.1.1 The parties undertake within the framework of their limited partner participation, to make the following capital contributions to AMD Fab X:

4.1.2 Limited Partners' Capital Contributions I

AMD subsidiaries	Capital Contribution	€ 3,232,000
Saxony or Holding Company	Capital Contribution	€ 1,105,000
M+W	Capital Contribution	€ 663,000
Total	Limited Partners' Capital Contributions I	€ 5,000,000

Of the Limited Partners' Capital Contribution I initially a total of € 500,000, i.e. € 323,200 for the AMD subsidiaries and € 110,500 for Saxony, and € 66,300 for M+W, will be entered in the Commercial Register as the liability capital sums of those partners after taking effect of this Cooperation Agreement. The entry of the liability capital, which has been increased by € 4,500,000 up to € 5,000,000, will be caused simultaneously for all partners upon achievement of Saxony's first milestone (LM I) according to the milestone regulation attached as **Appendix 4.1.1**.

The AMD subsidiaries have the right to increase prematurely the liability contribution to be made by them. The Limited Partners' Capital Contribution I will become due at the dates set out in **Appendix 4.1.1**. The second sentence of Section 4.1.3 shall also apply to the Limited Partners' Capital Contributions I.

4.1.3 Limited Partners' Capital Contributions II

AMD subsidiaries	Capital Contribution	€ 581,768,000
Saxony or Holding Company	Capital Contribution	€ 118,895,000
M+W	Capital Contribution	€ 59,337,000
Total	Limited Partners' Capital Contributions II	€ 760,000,000

The Capital Contributions II shall become due at the dates set out in **Appendix 4.1.1** and will be paid in the installments as specified therein in more detail. However, the Capital Contribution I and the first installment of Capital Contribution II by Saxony and by M+W will become due no earlier than at such date when transfer of title to the real estate as described in **Appendix 4.2.2** of AMD Saxony Limited Liability Company & Co. KG ("AMD Saxony") to AMD Fab X has been effected or instead the title re-registration has been applied for and the entry of such re-registration merely only requires issuance of the official record of changes by the municipal surveying authority and conveyance on the basis of such official record of changes.

4.2 Saxony and M+W agree to make the following typical silent partner capital contributions.

Saxony or Holding Company	Capital Contribution	€ 80,000,000
M+W	Capital Contribution	€ 60,000,000
Total	Typical silent partner capital contributions	€ 140,000,000

The silent partner capital contributions shall become due at the dates set out in **Appendix 4.1.1** and will be paid in the installments as specified therein in more detail. However, the first installment of each silent partner capital contribution will become due no earlier than at such date when transfer of title to the real estate as described in **Appendix 4.2.2** of AMD Saxony Limited Liability Company & Co. KG (“**AMD Saxony**”) to AMD Fab X has been effected or instead the title re-registration has been applied for and the entry of such re-registration merely only requires issuance of the official record of changes by the municipal surveying authority and conveyance on the basis of such official record of changes.

All limited partners and silent partners shall have the right to waive the requirement that one or all of the specified requirements are satisfied before the Limited Partners’ Capital Contributions I or II or, insofar as applicable, their silent partner capital contributions become due by written notice to the respective other Parties / AMD Fab X.

- 4.3 The Parties may hold their limited partner and silent participations in AMD Fab X directly or indirectly through one or more companies (“**Holding Companies**”). Other than the respective Party and M+W Zander Facility Engineering GmbH, no entities may hold an interest in the Holding Companies whose objects cover the development, manufacture, marketing or sale of semiconductor products (“**Competing Entities**”). Entities of the AMD Group are not considered Competing Entities. Other than M+W Zander Facility Engineering GmbH no Competing Entities may hold a direct or indirect interest in M+W. In deviation from the preceding sentences 2 and 4, finance investors who are not themselves engaged in the design, development, manufacture, marketing or sale of semiconductors may hold direct or indirect interests in AMD Fab X (above all, through Holding Companies and M+W). In case of an indirect participation, the respective Party must warrant that the Holding Company holding the limited partner share in AMD Fab X fulfils the obligations of the respective Party and/or Holding Company under this Agreement and under the attached Partnership

Agreements. Conversely, the other Parties hereto will grant to such Holding Company such rights which would be due to the concerned Party in case of a direct participation. In addition, concurrently with the execution of this Cooperation Agreement, AMD will issue the guarantees according to **Appendix 4.3**.

- 4.4 Insofar as any Party holds a direct or indirect share in a Competing Entity, such Party agrees to impose the same duties of confidentiality on the persons assigned by it to the organs of the Competing Entity as provided in section 20. In case of an indirect participation, the above provision shall be applied correspondingly insofar as a Holding Company holds a direct or indirect share in a Competing Entity. Insofar as any Party or Holding Company holds a direct or indirect majority share in a Competing Entity, the other Parties shall have the right to require from such Party or Holding Company the transfer of its shareholding in AMD Fab X, including any silent partner participation, to them or to a third party (Call Option) in accordance with Article 10.8 of the Limited Partnership Agreement. In addition, Parties and Holding Companies with a 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. M+W Zander Facility Engineering GmbH will assume an obligation which corresponds to the above provisions, in accordance with **Appendix 4.4**.
- 4.5 The other Parties are aware that Saxony holds an indirect non-majority interest in Infineon Technologies SC 300 GmbH & Co. KG and that Saxony holds a non-majority interest in the semi-conductor manufacturer ZMD AG.
- 4.6 The participation rights of the Holding Company used by Saxony for AMD Fab X will in each case be exercised in accordance with the decisions of Saxony.
- 4.7 Saxony guarantees to AMD that the Second General Partner exercises and has exercised no activity other than the assumption of the general partner position in AMD Fab X according to the Limited Partnership Agreement. Saxony further guarantees to AMD that the Second General Partner will at all times be financially funded such that it is able to perform its liabilities; this does not include any liabilities incurred by the Second General Partner by virtue of his position as personally liable partner of AMD Fab X. The aforesaid shall apply until any replacement of the Second General Partner as provided in Article 10a of the Limited Partnership Agreement.

If the Second General Partner is replaced in accordance with Article 10 a of the Limited Partnership Agreement, AMD guarantees to Saxony that the Second General Partner exercises and will exercise no activity other than the assumption of the general partner position in AMD Fab X according to the Limited Partnership Agreement as long as Saxony and M+W hold a - direct or indirect - interest in the Partnership. AMD further guarantees to Saxony – from replacement of the Second General Partner according to Article 10a of the Limited Partnership Agreement onward and as long as Saxony and M+W hold a direct or indirect interest in the Partnership – that the Second General Partner will at all times be financially funded such that it is able to perform its liabilities; this does not include any liabilities incurred by the Second General Partner by virtue of his position as personally liable partner of AMD Fab X

§ 5 Financing

§ 5.1 The investment volume is EUR 2,407 million. The total financing for the years 2003 to 2007 is EUR [***]* million and shall consist of:

5.1.1 the Capital Contributions mentioned at Sections 4.1.1 and 4.2

Capital Contribution AMD Subsidiaries	EUR 585 million
Saxony Capital Contribution	EUR 120 million + EUR 80 m
M+W Capital Contribution	EUR 60 million + EUR 60 m
Total Capital Contribution	EUR 905 million

* Confidential treatment has been requested for portions of this exhibit.

5.1.2 own resources and working capital

Revolving credit facility of AMD	EUR [***] [*] million
Grants and allowances according to Section 6	EUR 497 million ¹
Working capital	EUR [***] [*] million
Total own resources and working capital	EUR [***][*] million

Since the investment allowances were calculated on the basis of the currently applicable legal situation and since it is unclear in what amount investment allowances can be paid under the future regulation, AMD agrees that in the event this sum turns out to be lower than calculated they will fill the financing gap arising. The working capital will be supplemented in accordance with the AMD Fab X Cost Plus Reimbursement Agreement mentioned in Section 10.2.

5.1.3 third party finance

Bank loans less redemption (EUR 42 million)	EUR 658 million
Total third party finance	EUR 658 million

5.2 The Parties are aware that the requirements of EU law may not be satisfied in time to cover the financing requirements of AMD Fab X. Because of this, it is possible that delays in obtaining third party financing for the Fab X could arise. In this event, AMD undertakes to bridge any financial shortfalls occurring until March 31, 2004. If the decision of the EU should not be available by April 1, 2004, the Parties will consult with each other regarding the continuation of the project. AMD shall then have the right to end the project. In such case, AMD agrees to pay back the capital contributions made by Saxony and M+W, if any.

¹ Another investment allowance of EUR 46 million is expected to be paid in 2008.

^{*} Confidential treatment has been requested for portions of this exhibit.

5.3 Apart from payment of their capital contributions and without affecting the provisions of Section 6, Saxony and M+W are not obliged to provide additional finance, even if the capital of AMD Fab X is not sufficient for its requirements.

5.4 If the project is terminated by AMD prior to full payment of all contributions, AMD warrants to M+W that M+W's liability shall be limited to [***]* of its paid-in contribution. Any difference amount shall be reimbursed by AMD to M+W.

§ 6 Grants and Allowances

Saxony supports investment grants in the maximum amount legally permissible out of the funds of the joint tasks project "Improvement of the Regional Economic Structure" (GA) – "GA Means". If the total amount of the investment grants from GA Means which have been promised in a legally binding way and the investment allowances granted in a legally binding way exceeds the total grant admissible pursuant to the EU ruling, the investment allowances granted in a legally binding way are to be used first.

§ 7 Counter-Guarantees

In the event that AMD is not already liable to the lenders for the loans guaranteed by the federal government and Saxony, AMD will grant Saxony free of charge directly enforceable counter-guarantees on first demand for all guaranteed bank credits provided by Saxony together with the federal government for AMD Fab X (with an aggregate credit amount of € 700 million).

§ 8 Accession of an Additional Industrial Partner

8.1 The Parties aim to admit an additional [***]* partner who will [***]* of AMD Fab X, if possible will enter into obligations to [***]* and further, who is intended to become a partner in AMD Fab X and to contribute capital, perhaps by way of a capital increase. Saxony and M+W will agree to the acceptance of an

* Confidential treatment has been requested for portions of this exhibit.

["**"]* partner proposed by AMD on the basis of the Limited Partnership Agreement of AMD Fab X, their respective approval not to be withheld or delayed without good cause.

- 8.2 Such partner shall be accepted on appropriate conditions. If amendments or adjustments to this Agreement or the Partnership Agreements of AMD Fab X or other contractual agreement become necessary, the Parties will endeavor to agree on a mutually acceptable provision. Saxony and M+W will refuse their agreement thereto only if their interests are materially adversely affected.

§ 9 Research and Development

- 9.1 AMD aims to develop in the Fab X the 65 nm technology generation up to industrial production stage. The milestones for Saxony stated in Appendix 4.1.1 set forth the aimed-at time schedule up to production stage.

- 9.2 AMD Fab X also is to further develop the 65 nm technology generation and to prepare for implementation of the following technology generations also through its own development.

- 9.3 Research in Fab X is to take place in the areas indicated in Appendix 9.3.

§ 10 Agreement on Acceptance/AMD Fab X Cost Plus Reimbursement Agreement

- 10.1 AMD undertakes to take the entire production of AMD Fab X (in warmed-up operation up to 13,000 Wafer outs per month).

- 10.2 The details of the acceptance obligation and the terms thereof arise from the AMD Fab X Cost Plus Reimbursement Agreement attached in the draft version as Appendix 10.2.

§ 11 Service Agreements

- 11.1 AMD shall ensure that AMD Saxony shall make available to AMD Fab X general administrative services (for example IT, personnel administration, administrative services of a commercial nature) if required at competitive terms (at arms' length). In other respects AMD Fab X shall set up the required resources itself or obtain them from third parties.
- 11.2 In relation to the services required by AMD Fab X from today's perspective, AMD Fab X, AMD, AMD Fab X Holding GmbH and AMD Saxony will enter into the Fab X Management Services Agreement which is attached hereto as **Appendix 11.2**. AMD will be jointly and severally liable for the obligations of AMD Saxony under the agreement.

§ 12 Arbitrator

If and insofar as the Parties are unable to agree on the achievement of the milestones (see **Appendix 4.1.1**) and on the requirements stated in Section 14.1, the Parties will make efforts to immediately agree on an arbitrator and will instruct such arbitrator in the name of all the Parties for him to determine the disputed issues 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 expound their positions in writing and at one or more hearings before the arbitrator. The arbitrator shall state grounds for his decision. In his decision the arbitrator shall also decide on the division of the costs of the arbitration procedure based on who won and who lost the dispute (§§ 91 et seqq. ZPO – German Code of Civil Procedure), provided that each Party shall itself be responsible for the costs of its own advisors. The facts determined by the arbitrator shall have final and binding effect on the Parties. If the Parties are unable to agree on an arbitrator within 10 bank working days, then at the request of any Party the President of the Higher Regional Court of Dresden will appoint an expert or a consulting firm as arbitrator, such appointment having binding effect on the Parties. Such person or consulting firm shall not have, and within the past five (5) years shall not have had, business relations with any of the Parties.

§ 13 Non-Discrimination

13.1 AMD undertakes not to discriminate unreasonably against Fab X in favour of comparable factories.

13.2 Strategic decisions in relation to Fab X, and which concern the Dresden location, will not be taken against the wishes of Saxony, in accordance with the provisions concerning voting rights in the Limited Partnership Agreement of AMD Fab X.

§ 14 Warranty by AMD

14.1 AMD warrants irrespective of fault, by way of an independent guarantee, in accordance with § 311 ss. 1 Civil Code, that the provision for Fab X, in the event that this is technologically feasible, will be supplemented up to the point at which suitability for industrial production (= "Technical Completion" as defined in the Summary of Terms and Conditions regarding the grant of the bank loan to Fab X in the amount of € 700 million) has been achieved.

14.2 In the event of the breach of warranty, the other Parties are initially each entitled and obliged to demand that AMD provide proper performance within a reasonable period. These rights cannot be enforced if the other Party has committed a material breach of contract.

14.3 The availability of the results of the JDA to Fab X for the production of AMD products will be regulated by way of conclusion of the license agreement according to **Appendix 1.2**.

§ 15 Liability

15.1 Unless otherwise provided in this Agreement, the Parties are liable only in the case of intent and gross negligence.

15.2 There shall be no liability on the part of Saxony on the basis of the draft agreements submitted according to Section 20.5 or under § 839 Civil Code and Art. 34 of the Constitution, due to a breach of the confidentiality in connection with the political decision-making. Damage claims of any kind whatsoever, including, but not limited to, claims under § 839 Civil Code and Art. 34 of the Constitution,

shall not exist in this respect. The waiver of claims for damages, in particular in relation to § 839 Civil Code, shall be deemed to be a contractual obligation for the benefit of third parties. Technical data and technical details shall be protected comprehensively. In this respect, there shall be no restriction on liability according to sentence 1 above.

§ 16 Interest

All interest under this Agreement and the attached Partnership Agreements, shall be calculated pursuant to the 365/360 method.

§ 17 EU Reservation

The grant of the allowances envisioned in this Agreement (investment grants, investment allowances and guarantee) require the approval of the Commission of the European Union.

§ 18 Conditions Precedent

- 18.1 With the exception of the provisions of Sections 5.2, 18, 20, 21, 22, 23, and 24 which become effective upon the signature of this Agreement, this Agreement is subject to the following conditions precedent:
- 18.1.1 announcement of exemption or clearance by the Federal Cartel Office, or expiry of the relevant waiting periods,
 - 18.1.2 evidence of the granting of the EU approval of the subsidies according to Section 5;
 - 18.1.3 consent of the competent bodies of the federal government to the federal/state guarantee securing the bank loans for Fab X;
 - 18.1.4 consent and/or noting with approval, by the Budget and Finance Committee of Saxony,
 - 18.1.5 provision of the overall financing, in which connection the Syndicated Loan Agreement with Dresdner Bank/Dresdner Kleinwort Wasserstein or another replacement arranger/underwriter may include customary conditions to disbursement

-
- including, but not limited to the grant of the federal/state guarantee and evidence of the granting of the EU approval of the subsidies according to Section 5;
- 18.1.6 legal opinion of the law office O'Melveny & Myers LLP confirming that AMD Fab X is a "wholly-owned subsidiary" in the sense of the JDA.
- 18.1.7 signing of the General Contractor Contract with M+W Zander Facility Engineering GmbH; and
- 18.1.8 the approval of the supervisory boards of Jenoptik AG and of M+W Zander Holding AG by December 15, 2003.
- 18.2 If the conditions set out in Sections 18.1.2 and 18.1.5 are not satisfied in whole or in part, AMD is entitled, but not obligated, to take over such portion of the financing which is missing as a result thereof. In this event, the relevant condition shall be deemed to be satisfied. If the conditions stated in Section 18.1 have not been satisfied by December 31, 2004, even in consideration of Section 18.2, any later occurrence of the conditions shall be excluded.

§ 19 Duration and Termination

- 19.1 This Agreement is effected for an indefinite period of time, but at least until December 31, 2015.
- 19.2 If the project is ended in accordance with Section 5.2, AMD shall have the right to terminate this Cooperation Agreement.
- 19.3 If any Party is behind schedule with the performance of a material obligation under this Agreement, performance of the relevant obligation may be demanded by one of the other Parties in writing provided such Party has substantially performed its respective obligations and undertakings under this Agreement and the Appendices. If the obligation is not performed within 30 calendar days thereafter, the said other Party may terminate this Agreement by notice in writing. If the principal obligation in respect of which the contracting party is in default is also an obligation pursuant to the Limited Partnership Agreement, only the provisions of the Limited Partnership Agreement shall apply.

-
- 19.4 The right of termination of this Agreement for good cause shall remain unaffected.
- 19.5 A termination notice is effective only if, with effect as of the same time, the Limited Partnership Agreement and the Silent Partnership Agreement of AMD Fab X is effectively terminated.
- 19.6 The rights and duties of any Party under this Agreement, except for Sections 20 and 23, shall end once such Party or its holding entity has validly withdrawn as partner (i.e. both as limited and as silent partner) of AMD Fab X.
- 19.7 This Agreement shall terminate, except for Sections 20 and 23, without a notice of termination being required, upon the full withdrawal of Saxony and of M+W as direct or indirect partners (i.e. both as limited and as silent partners) of AMD Fab X.

§ 20 Confidentiality

- 20.1 Each Party is obliged, in relation to all confidential information, of which it becomes aware in the preliminary stages of the negotiations and presentations involved in the execution of this Agreement and/or in its capacity as a Party to this Agreement and/or to the agreements which are attached hereto as appendices, to maintain confidentiality vis-à-vis third parties. Each Party is obliged to use such information only for the purpose for which it has received same. The Parties undertake to subject their employees, representatives, shareholders and lenders to confidentiality to the usual extent. Each Party shall permit access to such information by its employees, agents, lenders and advisors only if and to the extent that they require such information for the performance of this Agreement and are subject to corresponding confidentiality obligations. Each Party may communicate confidential information to members of the legal, accountancy or taxation professions which are subject to professional confidentiality obligations, if and to the extent this is necessary in their own legitimate interests. The communication of confidential information to the Banks financing AMD Fab X/the capital contributions of the AMD Fab X partners, to the guarantors guarantying for the bank loans or to the European Union is permissible and must be subject to the corresponding confidentiality obligations (in the case of the EU: insofar as legally required). Further exceptions to the confidentiality obligation may be permitted in individual cases by separate agreements.

Notwithstanding any of the above or below provisions in this Agreement or in any other written or oral agreement made between the Parties or by which the Parties are bound, each Party shall be entitled to disclose the U.S. income tax treatment and the U.S. income tax structure of this Agreement and of the agreements related herewith. This right to disclose includes the right of each Party to involve without any limitation tax consultants regarding the U.S. income tax treatment and the U.S. income tax structure of this transaction and of the agreements related therewith. This right does not include the disclosure of any other information, including but not limited to, (i) any part of documents not relating to the U.S. income tax treatment and the U.S. income tax structure of the transactions as set out in this Agreement or the agreements related herewith; (ii) the identity of participants or potential participants in the transaction, except to the extent that such information relates to the U.S. income tax treatment and the U.S. income tax structure of the transaction as set out in this Agreement or in the agreements related herewith; (iii) the existence or status of negotiations; (iv) any financial information other than the financial information relating to the U.S. income tax treatment and the U.S. income tax structure of the transactions as set out in this Agreement or in the agreements related herewith; or (v) any other condition or detail which is of no importance with respect to the U.S. income tax treatment or the U.S. income tax structure of the transactions as set out in this Agreement or in the agreements related herewith. The partners acknowledge that this confirmed right shall not be deemed to be a waiver by any Party of any of their particular rights under the attorney-client privilege or the non-disclosure privilege under Section 7525(a) of the United States Internal Revenue Code 1986, as amended.

- 20.2 This obligation shall extend beyond the ending of this Agreement, provided that the obligations of confidentiality as agreed in any Appendix remain unaffected.
- 20.3 This obligation does not apply to information which is generally known, or information demonstrably independently worked out by the receiving Party, or information demonstrably obtained legally from third parties without any breach of the confidentiality obligation.

20.4 This obligation shall also not apply insofar as the Parties are obliged to disclose the received information under statutory provisions or official orders. In such event the affected Party is obligated immediately to inform the other Parties of the official order or the application of a statutory provision, as applicable, if possible in advance.

20.5 The Parties note that Saxony must present the draft agreements in Saxon ministries, the cabinet of Saxony and the parliament of Saxony, in the course of the political decision-making process. Technical data and technical details are to be comprehensively protected.

§ 21 Responsibility for costs and expenses

AMD shall bear its costs and the reasonable cost of the involvement of external advisors of Saxony and the Saxony Holding Company. These include, in particular, the costs and expenses associated with the report of ADL and the legal advice of Saxony and the Saxony Holding Company by Rechtsanwälte Clifford Chance Pünder, in connection with this Cooperation Agreement for the period from June 4, 2003 until signing of this Cooperation Agreement. In addition, from the date of signing of this Cooperation Agreement until December 31, 2003 the amount of [***]* will be borne for expenses and costs of Saxony and/or the Saxony Holding Company.

§ 22 Press Release

The Parties will publish a joint press release, which is reached in mutual agreement between them, concerning this project at a date also to be agreed upon between them. In addition, the parties undertake not to publish any further notice concerning the project unless required by law or by applicable stock exchange regulations, such as, for example, ad-hoc publication or the notice is agreed between the parties.

§ 23 Arbitration Agreement

23.1 All disputes arising out of or in connection with this Agreement or regarding its validity shall be conclusively decided in accordance with the Rules of Arbitration

* Confidential treatment has been requested for portions of this exhibit.

-
- of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) ousting the jurisdiction of the courts of law.
- 23.2 The place of the arbitration proceeding shall be Dresden.
- 23.3 The number of arbitrators shall be three.
- 23.4 German substantive law shall apply.
- 23.5 The arbitration proceeding shall be conducted in German.
- § 24 Final Provisions**
- 24.1 This Agreement (including its appendices) contains all agreements between the Parties and replaces all agreements previously reached between the Parties concerning its subject matter. There are no oral side agreements. In the event of any conflict or inconsistency between this Cooperation Agreement and an agreement which is attached hereto, the provision in such latter agreement shall fully supersede the corresponding previous provisions of this Cooperation Agreement.
- 24.2 Unless notarized form is prescribed, all amendments, additions and rescission of this Agreement require written form in order to be effective. This applies also to waiver of written form.
- 24.3 No Party may transfer rights under this Agreement to a third party without the prior written consent of the other Parties. This does not apply to cases expressly provided for in this Agreement.
- 24.4 If any provision of this Agreement is or becomes partially or wholly invalid or unenforceable or if this Agreement does not contain a per se necessary provision, the validity of the remaining provisions of this Agreement shall not thereby be affected. The same applies if an omission in this Agreement is ascertained. In the place of the invalid or unenforceable provision or for filling in the omission of a provision, such a legally admissible provision shall be deemed to have been agreed as corresponds to what the Parties would have intended or which would have been agreed by the Parties according to the meaning and purpose of this Agreement, if they had been aware of the invalidity or unenforceability of the relevant provision or of the omission.

Place, Date: Dresden, November 20, 2003

/s/ Robert J. Rivet

(Advanced Micro Devices, Inc.)

/s/ Juergen Giessmann /s/ Helmut Laub

(M+W Zander Fünfte Verwaltungsgesellschaft mbH)

/s/ Horst Metz /s/ Andrea Fischer

(Saxony)

[Translation]

[execution copy]

MASTER LEASE AGREEMENT
Semiconductor Manufacturing Equipment

January 5, 2005

SumiCrest Leasing Ltd.

Spansion Japan Limited

Table of Contents

	<u>Page</u>	
Article 1	(Definitions)	1
Article 2	(Structure of Transaction)	5
Article 3	(Lease)	5
Article 4	(Delivery)	6
Article 5	(Conditions Precedent to the Delivery)	6
Article 6	(Related Documents)	7
Article 7	(Payment of Lease Rent, Etc.)	7
Article 8	(Disclaimer of Warranties)	8
Article 9	(Loss, Damage and Risk Bearing)	9
Article 10	(Labels for Ownership)	10
Article 11	(Quiet Enjoyment)	10
Article 12	(Installation and Use)	10
Article 13	(Possession and Sublease)	11
Article 14	(Maintenance)	11
Article 15	(Alteration of Original Condition)	12
Article 16	(Ownership of Components)	12
Article 17	(Inspection)	13
Article 18	(Encumbrances, Etc.)	13
Article 19	(Insurance)	14
Article 20	(Representations and Warranties)	14
Article 21	(Covenants)	15
Article 22	(Indemnity and Cost Bearing)	15
Article 23	(Renewal of Lease Term)	16
Article 24	(Purchase Option)	17
Article 25	(Return)	18
Article 26	(Termination of Agreement)	20
Article 27	(Overdue Interest)	22
Article 28	(Assignment of Rights and Obligations)	22
Article 29	(Notice)	22
Article 30	(Amendment of Agreement)	22
Article 31	(Governing Law)	22
Article 32	(Competent Court)	22
Schedule 1	Equipment List	
Schedule 2	Lease Conditions	
Schedule 3	Certificate of Lease	
Schedule 4	Certificate of Return	
Schedule 5	Certificate of Conveyance	
Schedule 6	Notification Address	
Schedule 7	Return Conditions	
Schedule 8	Covenants	

MASTER LEASE AGREEMENT

This Master Lease Agreement is made and entered into by and between SumiCrest Leasing Ltd. ("Lessor") and Spansion Japan Limited ("Lessee") on January 5, 2005.

Article 1 (Definitions)

- 1 In this Agreement, except where the context otherwise requires specifically, the following terms on the left hand side shall have the following meanings on the corresponding right hand side.
- | | |
|--|--|
| Individual Transaction | Each individual transaction made under this Agreement and each certificate of lease. |
| Original Purchase Agreement | Each purchase agreement entered into between the Lessee and the Manufacturer concerning the purchase of the Equipment. |
| Purchase Agreement | Master Purchase Agreement to be entered into between the Lessee and the Lessor on the same date with this Agreement concerning the Equipment together with each individual agreement thereunder. |
| Tokumei Kumiai Agreement | Tokumei Kumiai Agreement to be entered into between the Lessor and the Investor on the same date with this Agreement. |
| Loan Agreement | Facility Agreement to be entered into between the Lessor and the Lenders on the same date with this Agreement and the agreement regarding acknowledgement of indebtedness and repayment thereunder. |
| Receivables Security Assignment Agreement | Master Receivables Security Assignment Agreement to be entered into by the Lessor, the Lenders and the Investor on the same date with this Agreement concerning the receivables under this Agreement together with each individual agreement thereunder. |
| Equipment Security Assignment Option Agreement | Master Equipment Security Assignment Option Agreement to be entered into by the Lessor, the Agent and the Investor on the same date with this Agreement concerning the Equipment together with each individual agreement thereunder. |
| Written Consent | Lessee's written consent in the prescribed form to the assignment of receivables under the Receivables Security Assignment Agreement and the creation of the security assignment option under the Equipment Security Assignment Option Agreement. |

Administration Agreement	Administration Agreement to be entered into between the Lessor and the Administrative Agent on the same date with this Agreement.
Related Agreements	This Agreement, the Purchase Agreement, the Tokumei Kumiai Agreement, the Loan Agreement, the Receivables Security Assignment Agreement, the Equipment Security Assignment Option Agreement, the Administration Agreement, Written Consent and the agreements and other documents related thereto.
Manufacturer	Person listed as "Manufacturer" in the certificate of conveyance, the certificate of acceptance and the certificate of lease in respect of each Individual Transaction.
Lenders	Person listed in Clause 10 of Schedule 2.
Agent	Person listed in Clause 7 of Schedule 2.
Investor	Person listed in Clause 12 of Schedule 2.
Administrative Agent	Person listed in Clause 13 of Schedule 2.
Indemnitee	All or any of the Lessor, the Lenders, the Investor and their successor, member of the board, employee and their agent.
Equipment	Group A Equipment and Group B Equipment, collectively.
Group A Equipment	Each Unit, including the Components, identified by Clause 1 of Schedule 1; provided that if any of the Units is excluded from this Agreement due to the occurrence of the Event of Total Loss and the exercise of the purchase option, the remaining Units shall consist of the Group A Equipment.
Group B Equipment	Each Unit, including the Components, identified by Clause 2 of Schedule 1; provided that if any of the Units is excluded from this Agreement due to the occurrence of the Event of Total Loss and the exercise of the purchase option, the remaining Units shall consist of the Group B Equipment.
Components	Instruments and parts consisting of the Unit and instruments, accessories, furnishings and parts (including single and collective comparable instruments, accessories, furnishings and parts) which may from time to time be incorporated in or attached to the Equipment.

Unit	Each set of the equipment (including the Components incorporated in or attached to such equipment) individually listed in the certificate of lease of the Equipment.
Delivery Date	With respect to each Individual Transaction, each day on which each Unit consisting of the Equipment is delivered under Article 4.
Expected Delivery Date	With respect to each Individual Transaction, each day specified as the expected delivery date in Clause 1 of Schedule 2 or the other Bank Business Day within the Delivery Period as agreed upon between the Lessee and the Lessor.
Delivery Period	Period commencing on the execution date of this Agreement and ending on the day specified as the final possible delivery date in Clause 1 of Schedule 2 or the period as agreed upon between the Lessee and the Lessor through the negotiation under Clause 4 of Article 4.
Delivery Location	Location in Japan where the Equipment or each Unit is located on each Expected Delivery Date notified by the Lessee to the Lessor no later than the Bank Business Day immediately prior to each Expected Delivery Date.
Purchase Price	The purchase price in respect of the Equipment or each Unit calculated under Article 3 of the Purchase Agreement.
Lease Rent	The lease rent in respect of each Unit calculated under Clause 3 of Schedule 2.
Stipulated Loss Value	The amount calculated under Clause 8 of Schedule 2 in respect of any day.
Purchase Option Exercise Price	The amount calculated under Clause 6 of Schedule 2 in respect of the Lease Term Expiration Date.
Lease Rent Payment Date	The day specified in Clause 4 of Schedule 2.
Lease Rent Calculation Period	The period specified in Clause 5 of Schedule 2.
Lease Term	The period specified in Clause 2 of Schedule 2 commencing on the Delivery Date; provided that in case of early termination of this Agreement, the period shall end on such termination date.

Lease Term Expiration Date	The end of December 2007.
Termination Event	All or any of the events specified in Clause 1 and Clause 2 of Article 26.
Event of Default	Termination Event or other events which would, with the giving of notice, the lapse of time or any other condition, constitute a Termination Event.
Event of Total Loss	In respect of the Equipment, the Units or the Components consisting thereof, the occurrence of : (a) loss or disappearance; (b) damage or trouble which the Lessee reasonably determines, and an appraiser appointed by the Lessor confirms, to be beyond economic repair or reuse; or (c) the confiscation, condemnation or theft.
Performance, Etc.	Performance, structure, design, specification, practical value, exchange value, usefulness, marketability, merchantability, durability, operability, economical efficiency, suitability for any purpose, legality and any other performance, function, nature, value and utility of the Equipment.
Encumbrances, Etc.	Ownership, right to possession, rental right, lease, mortgage, pledge, lien, security assignment, any conditional right in respect of the foregoing, any option in respect of the foregoing and any other use right and security interest of any kind, and the right based on the attachment or provisional attachment.
Permitted Encumbrances, Etc.	Encumbrances, Etc. excluded under Clause 1 of Article 18.
Losses, Etc.	Losses, damages, costs, fees, charges, liabilities, obligations, responsibilities, penalties, fines, overdue charges, claims and actions.
Taxes and Other Public Charges	Present and future taxes, assessments, withholdings, fees, charges, burdens and any other amounts under any entitlement whatsoever, as well as any penalties, fines, additions, overdue tax or interest thereon in respect of the foregoing under any entitlement whatsoever, which may be imposed by any tax or other governmental authority (whether domestic or foreign).
Bank Business Day	Day on which banks are open for business in Japan.

Lease Interest Rate	Actual interest rate used for calculating the Lease Rent specified in Clause 1 of Article 7.
Break Funding Cost	The amount calculated by each Lender using the calculation method determined by each Lender as the difference between the funding cost for each Lender with respect to the loan under the Loan Agreement and the estimated investment return based on the reinvestment rate of each Lender in the market.

- 2 Any reference herein to another agreement or document shall mean such agreement or document as amended, supplemented or modified, if such agreement or document has been amended, supplemented or modified after the original execution thereof.
- 3 Any reference herein to any of the clauses and paragraphs shall mean the clauses and paragraphs of this Agreement unless otherwise specified.
- 4 Any reference herein to any party to the Related Agreements shall also include its successors and permitted assignees.

Article 2 (Structure of Transaction)

- 1 The Lessee and the Lessor hereby acknowledge that the transactions listed in Clause 11 of Schedule 2 are contemplated in respect of the Equipment and they are respectively in close and integral relationship mutually.
- 2 The Lessee hereby acknowledges that the Lessor has the ownership of the Equipment during the Lease Term hereunder.

Article 3 (Lease)

- 1 On each Delivery Date, the Lessor shall simultaneously accept the delivery of each Unit constituting the Equipment from the Lessee under the Purchase Agreement and lease such Unit to the Lessee as provided herein, and the Lessee shall lease from the Lessor such Unit.
- 2 In each Individual Transaction, the lease of the Equipment and each Unit hereunder shall remain effective during each Lease Term commencing on the day on which each certificate of lease is delivered pursuant to Clause 5 of Article 4. Unless otherwise expressly provided herein, the lease of the Equipment may not be cancelled or terminated prior to each Lease Term Expiration Date.
- 3 The Lessee shall pay the Lease Rent as consideration for the lease hereunder pursuant to Clause 1 of Article 7.
- 4 The Lessor hereby acknowledges that the Lessor has completed its corporate internal authorization procedure with respect to conducting the lease hereunder.
- 5 By the lease under this Agreement, the Lessee shall be entitled to the right to quiet enjoyment of the Equipment pursuant to Article 11.

Article 4 (Delivery)

- 1 The Lessee shall specify the Expected Delivery Date to the Lessor in respect of each Unit consisting of the Equipment pursuant to Clause 1 of Schedule 2.
- 2 Subject to the satisfaction of the conditions set forth in Article 5 and the acceptance of delivery from the Lessee of each Unit on each Expected Delivery Date at the Delivery Location under the Purchase Agreement, the Lessor shall deliver to the Lessee such Unit on the same date at the same location for the purposes of the lease under the preceding Article, and the Lessee shall accept such delivery from the Lessor.
- 3 If any Expected Delivery Date is required to be changed, the Lessee shall notify the Lessor as soon as possible (at least no later than five (5) Bank Business Days prior thereto). With respect to each Individual Transaction, the Lessee and the Lessor shall newly agree upon the respective amounts of the Lease Rent, the Purchase Option Exercise Price and the Stipulated Loss Value based on the actual Purchase Price, Delivery Date and Lease Interest Rate of the relevant Unit. In such case, the agreed amount of the Lease Rent, the Purchase Option Exercise Price and the Stipulated Loss Value, together with the actual Purchase Price and Delivery Date mentioned above, shall be written and attached to each certificate of lease in the form of Schedule 3.
- 4 If the delivery of all the Units consisting of the Equipment under the immediately preceding clause is not completed within the Delivery Period, the Lessee and the Lessor shall negotiate in good faith regarding the possibility for the extension of the Delivery Period. The Lessee shall pay the costs and liabilities (including the Break Funding Cost) incurred due to the change of any Expected Delivery Date or the delay or inability of the delivery caused by any obvious fault of the Lessee.
- 5 Simultaneously with the delivery of each Unit under Clause 2 of Article 4 hereof, the Lessee shall execute and deliver to the Lessor the certificate of lease in the form of Schedule 3.
- 6 The delivery of each Unit for the purposes of the lease for each Individual Transaction hereunder shall be deemed completed by the delivery of the certificate of lease under the immediately preceding clause, and the Lessee shall be entitled to use each Unit on and after the date on which the relevant certificate of lease is delivered.
- 7 All costs of delivery of the Equipment under this Article 4 shall be borne by the Lessee.

Article 5 (Conditions Precedent to the Delivery)

The obligations of the Lessor to deliver each Unit under Article 4 in each Individual Transaction shall be subject to the fulfillment of all the following conditions prior to the relevant Expected Delivery Date, unless the Lessor notifies the Lessee before the completion of the delivery to the effect that such conditions are not required to be fulfilled:

- (1) Up to the Expected Delivery Date, there has been no event that causes the Lessor to foresee any change in any law, order, official directive or other regulation, administrative guidance or taxation that would make the transactions contemplated by the Related Agreements illegal or make the Lessor reasonably determine that the termination or postponement of such transactions would be appropriate; provided however that if the Lessor believes the occurrence of any event under this clause the Lessor shall previously negotiate with the Lessee;

-
- (2) Up to the Expected Delivery Date, there has been no event that would make the consummation of the transactions contemplated by the Related Agreements significantly difficult;
 - (3) The Lessee has purchased from the Manufacturer the relevant Unit on or before the relevant Expected Delivery Date pursuant to the Original Purchase Agreement and has obtained the ownership thereof;
 - (4) The relevant Unit is insured by the insurance effective as of the relevant Expected Delivery Date pursuant to Article 19;
 - (5) No Event of Default has occurred as to the Lessee;
 - (6) No event has occurred which constitutes, or which the Lessor reasonably determines may result in, an Event of Total Loss in respect of the relevant Unit;
 - (7) The Related Agreements to which the Lessor or the Lessee is to be a party have been executed and delivered by all the parties thereto and continue in full force and effect;
 - (8) All of the Lessee's representations and warranties under Article 20 are correct as of the relevant Expected Delivery Date under the situations existing on that date; and
 - (9) There has been no material adverse change in the financial condition of the Lessee.

Article 6 (Related Documents)

- 1 The Lessee and the Lessor shall respectively follow the procedures required to authorize the execution of this Agreement and the other Related Agreements and the performance the obligations under this agreements, and provide each other the certificate of seal impression which is affixed to these agreements (issued within three months prior to the execution date of each agreement), the certified copy of the commercial registry (issued within three months prior to the execution date of each agreement) and the articles of incorporation (effective as of the execution date hereof).
- 2 The Lessee shall provide to the Lessor the following documents prior to each Expected Delivery Date:
 - (1) the original copy of the Written Consent concerning the relevant Unit with a certified date (*kakutei hiduke*) of the notary public;
 - (2) the copy of other documents as the Lessor reasonably requires; and
 - (3) the documents set forth in Clause 5 of Article 19.

Article 7 (Payment of Lease Rent, etc.)

- 1 In respect of each Individual Transaction, the Lessor shall confirm the amount of Lease Rent for the Lease Rent Calculation Period commencing on the relevant Lease Rent Payment Date and provide the written notice to the Lessee no later than one month prior to the relevant Lease Rent Payment Date (excluding the first Lease Rent Payment Date). The Lessee shall pay in

-
- advance the relevant Lease Rent, as well as the consumption tax thereon on the case such Lease Rent should be subject to the consumption tax, by 11:00 a.m. of the relevant Lease Rent Payment Date. In each Individual Transaction, the payment of the relevant Lease Rent payable on the first Lease Rent Payment Date shall be set off against the Purchase Price payable to the Lessee under the Purchase Agreement on the same date.
- 2 In case that the Lessee pays the Lease Rent under the immediately preceding clause by the wire transfer, etc., the Lessee shall not be liable for the delay in remittance or nonpayment thereof caused by any troubles in the electronic settlement system of financial institutions, etc. if it is apparent that such delay or nonpayment is not attributable to the Lessee by the Lessee's presentation of the transmission records, etc. evidencing that the relevant amount could reasonably arrive on or prior to the due date therefor.
- 3 If the due date of the payment for each Individual Transaction by Lessee hereunder is not a Bank Business Day, the Lessee shall pay the Lease Rent, the Stipulated Loss Value and the Purchase Option Exercise Price on the immediately preceding Bank Business Day with the adjustment of the amount paid, and shall pay other amounts on the immediately following Bank Business Day without the adjustment of the amount paid.
- 4 All amounts payable by the Lessee hereunder shall be paid in the method set forth in Clause 9 of Schedule 2 unless otherwise agreed upon between the parties.
- 5 The amount payable by the Lessee to the Lessor hereunder shall be paid in full without any deduction, set-off or defense regardless of the existence of defect in the Performance, Etc. of the Equipment, the existence of the Encumbrances, Etc. to the Equipment, the existence of infringement to the use of the Equipment, the bankruptcy of the related parties or any other reason whatever. If the Lessee is required by law to make any withholding from such payment, the Lessee shall pay such additional amounts as may be necessary to ensure that the amount received after such withholding is equal to the full amount which the recipient would have received if no such withholding is required.
- 6 In the case of termination of the lease hereunder for each Individual Transaction on a day other than the Lease Rent Payment Date due to the occurrence of an Event of Total Loss to the Equipment or the Unit, the occurrence of a Termination Event, the exercise of a purchase option or return option by the Lessee, or any other reason whatever (excluding the termination due to a reason attributable to the Lessor), the Lessee shall pay to the Lessor the Break Funding Cost on the relevant termination date, provided that in the case of the occurrence of an Event of Total Loss, the Clause 1 of Article 9 shall be applied.
- 7 If the amount actually paid by the Lessee falls short of the total amount of the liabilities due and payable by the Lessee to the Lessor hereunder, the Lessor may, at its discretion, specify the order of priority and the method of appropriation thereof.

Article 8 (Disclaimer of Warranties)

- 1 The Lessor shall lease the Equipment to the Lessee on an "as-is, where-is", and shall neither make any guarantee, express or implied, as to the Equipment nor bear any warranty liability in respect of any defects, whether

apparent or not, in the Equipment. The Lessor shall neither make any guarantee as to any absence of Encumbrances, Etc. on the Equipment or the Components nor bear any warranty liability in respect of any Encumbrances, Etc., whether known to it or not.

- 2 The Lessee shall, at its own responsibility and cost, obtain any appropriate quality assurance from the Manufacturer or the suppliers of the Components and make arrangements for after-sale services thereof, and hereby assign to the Lessor the rights (other than those which are not assignable) against such parties as to the Equipment such as any rights to warranty or guarantee (including claims for defect warranty). Notwithstanding the foregoing, the Lessee may, so long as no Termination Event occurs, exercise such rights to warranty or guarantee in its own name and be entitled to the performance of such warranty or guarantee directly from the Manufacturer or the suppliers of the Components during the Lease Term.
- 3 If the Lessee suffers any damages or disadvantages, etc. as a result of any lack of the Performance, Etc. of the Equipment, the Lessee may, at its own responsibility and cost, make claims directly against the Manufacturer or the supplier of the Components for the damages and the recovery of disadvantages based on the rights set forth in the immediately preceding clause, and the Lessor shall not be responsible therefor provided, however, that the Lessee's obligations under Article 14 shall not be affected.

Article 9 (Loss, Damage and Risk Bearing)

- 1 Upon the occurrence of an Event of Total Loss to all of the Equipment or any of the Units, the Lessee shall immediately notify the Lessor of such occurrence and shall, no later than the earlier of (a) the day which is 90 days after the occurrence of such Event of Total Loss (or any subsequent day agreed upon between the Lessor and the Lessee if such Event of Total Loss occurs caused by the event not attributable to the Lessee) or (b) the Bank Business Day immediately following the day on which the insurance proceeds payable for the insurance as provided in Article 19 are paid, pay to the Lessor the Stipulated Loss Value in respect of such Equipment or Unit, the Break Funding Cost and other liabilities due and payable as of such payment date, and all any other expenses incurred by the Lessor.
- 2 When the Lessee makes the payment under the immediately preceding clause, the Lessor shall transfer to the Lessee the rights to the Equipment or the Units subject to the Event of Total Loss and the rights against the third party which the Lessor acquires as a result of the occurrence of such Event of Total Loss (excluding rights to claim the compensation or indemnity for the liability for damage to be borne by the Lessor) on an "as-is, where-is" basis at the time of such transfer and without any warranty of the Performance, Etc., any financial capability or creditworthiness of such third party or otherwise.
- 3 When the Lessor receives any compensation for damages (including any moneys, whatever they may be called, paid for the purpose of compensation or indemnity for damages and disadvantages caused by an Event of Total Loss but excluding moneys paid for the purpose of compensation or indemnity for the liability for damage to be borne by the Lessor) from any third party or total loss insurance proceeds as a result of the occurrence of an Event of Total Loss to the Equipment or the Unit, and if the Lessee fails to make the payment of the Stipulated Loss Value under Clause 1 of Article 9

until the due date therefor (whether known to the Lessee if such payment under Clause 1 of Article 9 has become due as a result of the payment of the total loss insurance proceeds), the received amount shall be applied to the payment of such Stipulated Loss Value; provided that if there is any excess after such application, the Lessor shall immediately return to the Lessee such excess after deducting any unpaid amount (including any default interests) due and payable by the Lessee to the Lessor under the Related Agreements, and if there is any shortfall after such application, the Lessee shall not be released from its obligations to pay the shortfall amount. In addition, if the Lessee has already made the payment of the Stipulated Loss Value at the time mentioned above, the Lessor shall immediately return to the Lessee the remaining amount received by the Lessor as mentioned above after deducting any unpaid amount (including any default interests) due and payable by the Lessee to the Lessor under the Related Agreements.

- 4 The Lessee shall bear, during the Lease Term, all risks of loss (including the Event of Total Loss) or damage to the Equipment or the Components and any costs associated therewith.
- 5 If an Event of Total Loss occurs to any Unit and the Lessee pays the Stipulated Loss Value for such Unit and any other unpaid amount for such Unit or Event of Total Loss, such Unit shall be excluded from the transaction under the Related Agreements and the Lessee shall thereafter have no obligations to pay the Lease Rent payable for such Unit.

Article 10 (Indication of Ownership)

The Lessee shall, at its own responsibility and cost, affix a mark indicating that the Equipment is owned by the Lessor or other similar marks at the place where the Equipment is installed and on each main Unit of the Equipment and on any Unit requested by the Lessor in the manner easily recognizable by third parties.

Article 11 (Quiet Enjoyment)

So long as no Termination Event occurs, the Lessee shall be entitled to the quiet enjoyment of the Equipment and the Lessor shall not disturb such enjoyment by the Lessee without any justifiable reason.

Article 12 (Installation and Use)

- 1 The Lessee shall, at its responsibility and cost, install the Equipment at its facilities located at 6 Mondenmachi Kougyodanchi, Aizuwakamatsu-shi, Fukushima and 1-11 Aza Higashi Takaku, Oaza Takaku, Kouzashimachi, Aizuwakamatsu-shi, Fukushima in accordance with the standards for and method of installation established by the Manufacturer and regulatory authorities and shall not relocate the Equipment without the prior consent of the Lessor except for the relocation or movement of the Equipment between the two (2) facilities as mentioned above, provided that the relocation or movement of the Equipment between the two (2) facilities as mentioned above shall be permissible if the Lessee shall promptly give a prior or subsequent written notice to the Lessor and if the Lessor shall approve this without delay. Any installation of the Equipment or any Unit outside Japan shall be permissible conditional upon the prior consent of the Lessor, the compliance

-
- with all the terms of this Agreement in respect of the Equipment or such Unit even outside Japan, no effect arising against the Lessor's or the Lenders' rights to the Equipment and rights under the Related Agreements, and the Lessee's compliance with Japanese or U.S. export or re-export control laws and regulations as an exporter.
- 2 The Lessee may, with the prior written consent of the Lessor, replace all or any of the Equipment with equipment that the Lessor deems to have equal value or equal price; provided that in the case of such replacement, the Lessee shall cooperate with the Lessor, the Agent and the Investor to have such replacing equipment consisting of the Equipment subject to the security assignment option under the Equipment Security Assignment Option Agreement.
 - 3 The Lessee shall comply with all laws and regulations (including environmental law) applicable to the Equipment and its installation, use and operation and, in all material respects, with the requirements, conditions and instructions of, and agreements with, the Manufacturer, the suppliers of the Components or the insurance companies, and shall use the Equipment only for lawful purposes.
 - 4 The Lessee shall, at its own responsibility and cost, prepare and keep records concerning the use and operation of the Equipment.

Article 13 (Possession and Sublease)

- 1 The Lessee shall not, without the prior consent of the Lessor, transfer the possession of, or sublease, the Equipment to a third party. Notwithstanding the foregoing, the Lessee may, at its own responsibility and cost, without the Lessor's consent, transfer the possession of the Equipment to the Manufacturer or any qualified mechanics or repairmen for the purposes of repair or maintenance.
- 2 No transfer of possession or sublease under the immediately preceding clause shall affect any of the Lessee's obligations hereunder. The terms, duration and otherwise of the permitted transfer of possession or sublease shall be subject and subordinate to all of the provisions of this Agreement. No Tax and Other Public Charges incurred by the Lessee as a result of such transfer of possession or sublease shall affect the Lease Rent or other terms of lease hereunder. The Lessee shall, at its own responsibility and cost, take all reasonable measures (not limited to those specified in this Agreement) to ensure that the Lessor and the Lenders shall retain and keep the existing benefit of any security interests given to them.
- 3 In the case of sublease, the Lessee shall have the Equipment insured under Article 19.

Article 14 (Maintenance)

- 1 The Lessee shall, at its own responsibility and cost, maintain the Equipment in a safe condition at all times.
- 2 The Lessee shall, at its own responsibility and cost, repair and maintain the Equipment in compliance with the relevant laws and regulations, in compliance with the method approved or recommended by the Manufacturer or the suppliers of the Components, and at least in compliance with the

equivalent method applied to other comparable equipments used by the Lessee. The Lessee shall at all times keep the Equipment in the same condition as on the Delivery Date, ordinary wear and tear excepted. In any event, the Lessee shall not take any action which would have a material adverse effect on any Manufacturer's warranty for the Equipment.

- 3 The Lessee shall, at its own responsibility and cost, prepare and keep records concerning the repair and maintenance of the Equipment including daily reports.
- 4 The Lessee may, at its own responsibility and cost, for the purpose of repair and maintenance set forth in Clause 2 of Article 14, replace the Components with any alternative parts having the same Performance, Etc. as the relevant Components and owned by the Lessee free and clear of any Encumbrances, Etc. (other than the Permitted Encumbrances, Etc.). In addition, the Lessee may attach the parts owned by the Lessee free and clear of any Encumbrances, Etc. (other than the Permitted Encumbrances, Etc.) to the Equipment not for the replacement of the Components; provided however that such replacement and attachment shall not diminish or change the Performance, Etc. of the Equipment.
- 5 The Lessee may, at its own responsibility and cost, remove any Components attached to the Equipment after the delivery to the Lessee of such Equipment under Article 4 not for replacement of the Components but for an addition, or the Components which is possible to be removed without diminishing the Performance, Etc. of the Equipment, in each case without attaching alternative parts to the Equipment.

Article 15 (Alteration of Original Condition)

The Lessee shall alter or improve the Equipment as required by the relevant laws and regulations. Except for the progressing alteration to the original condition notified to the Lessor on or before the execution date hereof, the Lessee may, at its own responsibility and cost, so long as the Performance, Etc. of the Equipment shall not be diminished or changed, and so long as there shall be no violation of Clause 1 of Article 12 or each clause of the immediately preceding article, make the necessary or favorable alterations and modifications to the Equipment in the course of its business; provided, however, that in this Article, if such alteration or improvement gives significant effects on the Performance, Etc. of the Equipment such as deterioration, etc. due to the change of usage/process, the prior consent of the Lessor shall be required. In case that the Lessee fails to obtain such prior consent of the Lessor, the Lessee may make a replacement with equipment which the Lessor deems to have equal value or equal price; provided that the Lessee shall cooperate with the Lessor, the Agent and the Investor to have the equipment which will consist of the Equipment by such replacement subject to the security assignment option under the Equipment Security Assignment Option Agreement.

Article 16 (Ownership of Components)

- 1 Except as provided for in Clause 2 of Article 16, the Components attached to the Equipment by the Lessee pursuant to Clause 4 of Article 14 shall, simultaneously with such attachment, become the Components consisting of the Equipment and automatically become subject to the ownership of the

Lessor and shall be leased by the Lessor to the Lessee hereunder. The Components removed from the Equipment shall become subject to the ownership of the Lessee simultaneously with the transfer of the ownership of the alternative Components to Lessor. However, the replaced or removed Components which are not replaced with the comparable parts shall remain subject to the ownership of the Lessor and subject to this Agreement, wherever they are located.

- 2 The Lessee may, with a written notice to the Lessor, reserve its ownership of any parts attached to the Equipment by the Lessee pursuant to Article 14 or 15 not for replacement of the Components but for an addition after the delivery to the Lessee of such Equipment under Article 4 which may be removed from the Equipment without diminishing the Performance, Etc. of the Equipment; provided, however, that the Lessor may deem such parts as Components for the purposes of Clause 3, 4 and 6 of Article 26 and in foreclosing the security interest under the Equipment Security Assignment Option Agreement.

Article 17 (Inspection)

- 1 The Lessor may, with the prior notice to the Lessee, enter the offices, plants, facilities and other premises of the Lessee and inspect the condition, installation, use, operation, custody, repair, maintenance, etc. of the Equipment and the Components; provided, however, in the case of such inspection, the Lessor shall not disturb the Lessee's normal business operations and shall comply with the restrictions of confidentiality, security and safety imposed by the Lessee.
- 2 In the case of sublease of the Equipment under Clause 1 of Article 13, the Lessee shall make the sublessee acknowledge the same rights of the Lessor against the sublessee as those of the Lessor against the Lessee under the immediately preceding clause. In such case, the Lessor shall comply with the same obligations for the sublessee under the proviso in the immediately preceding clause.

Article 18 (Encumbrances, Etc.)

- 1 The Lessee shall not create, approve or cause to exist any Encumbrances, Etc. on the Equipment, the Unit, the Components or any rights or interest to or in this Agreement except for: (a) the respective rights of the Lessor and the Lessee as set forth in this Agreement; (b) employees', mechanics', repairmen's liens and other similar security interests which arise in the Lessee's ordinary course of business, the payment for which is not due and the foreclosure of which on the relevant equipment is not imminent; and (c) the Encumbrances, Etc. arising from the rights of the Lessor, the Lenders, the Agent and their respective successors and permitted assigns under the Related Agreements (including the various types of loan and security agreements contemplated thereby).
- 2 The Lessee shall, at its own responsibility and cost, duly discharge any Encumbrances, Etc. not excluded in the proviso of the immediately preceding clause.

Article 19 (Insurance)

- 1 The Lessee shall, at its own responsibility and cost, at all times during the Lease Term, enter into the insurance agreements covering the loss or damage of the Equipment as insured person (beneficiary) with insurance companies which the Lessor recognizes as insurers of international reputation and shall keep such insurance agreements.
- 2 The insured amount under the insurance as provided in the immediately preceding clause shall not be less than 100% of the Stipulated Loss Value as of the Lease Rent Payment Date immediately preceding the date on which such insurance is carried.
- 3 The Lessee shall promptly give notice to the Lessor if any insured event occurs (whether total loss or partial damage) to the Equipment or each Unit.
- 4 The insurance proceeds payable for any restorable or repairable damage (partial damage) occurred to the Equipment or each Unit shall be received by the Lessee. If the Lessee receives such insurance proceeds, the Lessee shall spend all of such insurance proceeds for the payment to restore or repair such damage of the Equipment or such Unit unless the Lessee has not already restored or repaired such damage. If an Event of Total Loss occurs to the Equipment or any Unit, the Lessee shall immediately assign the right to claim the insurance to the Lessor or arrange the procedures to cause the insurers to pay the insurance proceeds to the Lessor, and the Lessor shall treat the insurance proceeds following Clause 3 of Article 9.
- 5 The Lessee shall obtain a certificate of the existence of insurance policy to be compliant with the foregoing conditions from the insurance companies set forth in Clause 1 of Article 19 and deliver such certificate to the Lessor on or before the initial Delivery Date under Article 4 and at the time of commencement of each insurance period (at least once a year) during the period for which the insurance under this Article 19 is required.
- 6 The terms of insurances set forth in this Article 19 shall at all times and in all respects not be less favorable than the terms of the insurances which the Lessee maintains for the similar equipment used by it. If the terms of insurances under this Article 19 become less favorable than the terms of any such other insurance, the terms of insurances under this Article 19 shall be raised to the extent of the terms of such other insurances, and the Lessee shall promptly comply with the terms so raised.

Article 20 (Representations and Warranties)

- 1 The Lessee hereby represents and warrants to the Lessor as of the execution date of this Agreement that:
 - (1) the Lessee has full power and authority, and has taken all necessary action, to enter into, to exercise its rights, and to perform all of its obligations under the Related Agreements to which it is a party, under the laws and regulations and its internal rules;
 - (2) neither of the execution and delivery nor the performance by the Lessee of the Related Agreements to which it is a party will violate, in any respect, any law, regulation, the Lessee's articles of incorporation or other organizational document, or any agreement to which it is a party;

-
- (3) the Related Agreements to which the Lessee is a party constitute its legal, valid and binding agreements compulsorily enforceable against it in accordance with their respective terms;
 - (4) neither the execution and delivery by the Lessee of the Related Agreements to which it is a party nor the consummation and performance by it of the transactions contemplated thereby will require any consent or approval of, report or registration to, or any other procedure in respect of, any Japanese public agencies or courts, except for those already obtained or done;
 - (5) there are no pending judicial or administrative proceedings which would adversely affect the exercise of its rights or performance of its obligations by the Lessee under the Related Agreements to which it is a party; and
 - (6) Fujitsu Limited (called "Fujitsu" hereafter, principal office : 4-1-1 Kamikodanaka, Nakahara-ku, Kawasaki-shi, Kanagawa) shall continue to hold directly or indirectly 40% or more of the issued and outstanding voting common shares of the Lessee during the period from the execution date of this Agreement to the final Lease Rent Payment Date within the Lease Period from the closing date to June 30, 2007.
- 2 The representations and warranties in the immediately preceding clause shall be deemed repeated by the Lessee on and as of each Delivery Date and each Lease Rent Payment Date for an Individual Transaction as if made under the situations existing on such date.

Article 21 (Covenants)

The Lessee covenants with the Lessor to perform the provisions set forth in Schedule 8.

Article 22 (Indemnity and Cost Bearing)

- 1 Except as otherwise specified in this Article 22, the Lessee shall incur or indemnify all or any of the Indemnitees for, and pay at the direction of the relevant Indemnitees directly to the relevant authority or the third party for, the Tax and Other Public Charges and the Losses, Etc. imposed on or incurred by all or any of the Indemnitees relating directly or indirectly to: the Equipment, the Unit or the Components; ownership, possession, use, operation, lease, sublease, installation, custody, repair, maintenance, improvement, alteration, insurance, Encumbrances, Etc., delivery, purchase, conveyance, return, Performance, Etc., structure, design, specification, utility, durability, operability or products thereof; any of the Related Agreements, or any payments thereunder or other transactions contemplated thereby; provided however, that the Lessee shall not be obligated to make the indemnity or payment under this clause in respect of the Tax and Other Public Charges imposed on or based on the net profit of such Indemnitee or of the Tax and Other Public Charges otherwise provided in this Agreement.
- 2 With respect to the expenses for the preparation and execution of the Related Agreements, the attorney's fees shall be borne by each party.

- 3 Unless otherwise expressly provided herein, the following expenses for the performance of obligations or the consummation of transactions under the Related Agreements shall be borne as follows:
- (1) the banking fees for the payment under Article 7, etc. shall be borne by the Lessee;
 - (2) the expense for the exercise of purchase option or the return by the Lessee of the Equipment including the attorney's fees shall be borne by the Lessee; and
 - (3) the expense attributable to the occurrence of the Event of Default including the attorney's fees shall be borne by the Lessee.
- 4 Unless otherwise expressly provided herein, the Tax and Other Public Charges in respect of the Related Agreements shall be paid as follows:
- (1) the stamp duty imposed on the preparation of the Related Agreements shall be paid by the Lessee;
 - (2) any consumption tax imposed on the payment of the purchase prices or the Lease Rent under the Related Agreements shall be paid by the party which makes such payment to the other in addition to the relevant amount unless otherwise agreed upon between the parties hereto; provided, however, that the foregoing shall not apply in the case that any of the parties hereto shall be exempted from the consumption tax pursuant to the relevant consumption tax laws and regulations; and
 - (3) the real property tax imposed on the Equipment shall be paid by the party which is the taxpayer under the relevant laws and regulations; provided that if the Lessor shall pay such tax (whether or not such tax becomes due and payable by the Lessor before the Lease Term Expiration Date), the Lessee shall pay to the Lessor the amount equal to such real property tax.
- 5 Any payment of the Tax and Other Public Charges for which the Lessee indemnifies the Indemnitees or pays under this Article 22 shall be made on a net after tax basis.
- 6 If the interest rate for the loan is raised or any increased cost is required under the Loan Agreement, the Lessor may raise the Lease Rent or claim the Lessee for such increased cost, in which case, the respective amount of the Purchase Option Exercise Price and the Stipulated Loss Value shall be recalculated.
- 7 If the Tax and Other Public Charges and other expenses payable by the Lessee under the Related Agreements are paid or advanced by the Lessor, the Lessee shall pay promptly on demand by the Lessor the amount so paid or advanced and the interest thereon from such payment date calculated pursuant to Article 27; provided that the Lessor shall notify the Lessee promptly upon such payment or advance.

Article 23 (Renewal of Lease Term)

The lease of the Equipment hereunder may be renewed as of the Lease Term Expiration Date only if the Lessor, the Lessee, the Agent and the Investor agree upon the period and the conditions for renewal no later than at least six months prior to the Lease Term Expiration Date.

Article 24 (Purchase Option)

- 1 In each Individual transaction, the Lessee shall have the option, exercisable by giving a notice to the Lessor and the Agent respectively at least six months prior to the Lease Term Expiration Date and by paying to the Lessor of the Purchase Option Exercise Price specified in Clause 6 of Schedule 2 no later than the final Lease Rent Payment Date, to purchase all or any of the Units of the Group A Equipment (regardless of the number thereof) on the Lease Term Expiration Date. In conjunction with the exercise by the Lessee of the purchase option under this clause at the prescribed Purchase Option Exercise Price, the Lessee shall pay the amount equal to the Purchase Option Exercise Price to the Lessor no later than the final Lease Rent Payment Date, which amount shall be dealt with by the Lessor as the advance payment until the Lease Term Expiration Date; provided, however, that if the Lessee returns to the Lessor all of the Group B Equipment pursuant to Article 25, all of the Group A Equipment shall be returned to the Lessor pursuant to Article 25. The purchase option shall be deemed to have been exercised with respect to the Group A Equipment regardless of the notice by the Lessee, unless the Lessee returns the Group A Equipment on the Lease Term Expiration Date pursuant to Article 25. The notice of exercise of the purchase option under this clause may not be revoked once given.
- 2 In each Individual transaction, the Lessee shall have the option, exercisable by giving a notice to the Lessor and the Agent respectively at least six months prior to the Lease Term Expiration Date and by paying to the Lessor of the Purchase Option Exercise Price specified in Clause 6 of Schedule 2 no later than the final Lease Rent Payment Date, to purchase only all (and not a part) of the Group B Equipment on the Lease Term Expiration Date. In conjunction with the exercise by the Lessee of the purchase option under this paragraph at the prescribed Purchase Option Exercise Price, the Lessee shall pay the amount equal to the Purchase Option Exercise Price to the Lessor no later than the final Lease Rent Payment Date, which amount shall be dealt with by the Lessor as the advance payment until the Lease Term Expiration Date. The purchase option shall be deemed to have been exercised with respect to all of the Group B Equipment regardless of the notice by the Lessee, unless the Lessee returns the Group B Equipment on the Lease Term Expiration Date pursuant to Article 25. The notice of exercise of the purchase option under this paragraph may not be revoked once given.
- 3 The advance payment paid by the Lessee under the preceding two (2) clauses shall be applied to the payment of the Purchase Option Exercise Price on the Lease Term Expiration Date; provided, however, that if any Termination Event or Event of Default occurs and continues, such advance payment received by the Lessor shall be disposed pursuant to Clause 5 of Article 26. If such advance payment is applied by the Lessor to the Lessee's obligations under this clause, the Lessor's ownership of or other rights to the Equipment or the relevant Units subject to the purchase option shall be transferred at the time of such application to the Lessee on an "as-is, where-is" basis and without any warranty of the Performance, Etc. or otherwise.
- 4 If the Lessee receives the amount set forth in Clauses 1 and 2 of Articles 24 and applies such amount to the payment of the Purchase Option Exercise Price pursuant to Clause 3 of Article 24, the Lessor shall execute and deliver to the Lessee a certificate of conveyance in the form of Schedule 5.

5 The Lessee shall bear all costs and expenses associated with the Lessee's exercise of the purchase option.

Article 25 (Return)

- 1 In respect of all or any of the Units of the Equipment, the Lessee shall have the option, exercisable by giving a notice to the Lessor and the Agent respectively at least six (6) months prior to the Lease Term Expiration Date, to return the Units consisting of the Group A Equipment on the vehicles sent by the Lessor on the premises of the facilities for the installation set forth in Clause 1 of Article 12 and the Units consisting of the Group B Equipment at the location in Japan specified by the Lessor on the Lease Term Expiration Date (for the purpose of this Article, the "Return Date") in accordance with the provisions set forth below; provided, however, that if an Event of Total Loss occurs to all or any of the Group A Equipment, the Lessee shall not exercise the option to return the Units consisting of the Group B Equipment; provided further that in any case the Lessee may return the Units consisting of the Group B Equipment only if the Lessee returns all of the Units subject to this Agreement as of the Return Date. If the Return Date is not a Bank Business Day, the Lessee shall return on the immediately following Bank Business Day without any specific notice; provided, however, that if any of the Termination Events or the Events of Default (including those in respect of the clause regarding the return under this Article) occurs or continues on the Return Date, the Lessee may not exercise the option to return the Equipment under this Article. In the case of return of all or any Units of the Equipment to the Lessor, the Lessee shall deposit with the Lessor the amount equal to the Purchase Option Exercise Price specified in Clause 6 of Schedule 2 no later than the last Lease Rent Payment Date (which the Lessor may redeposit with the Administrative Agent) and such deposit shall be returned to the Lessee at the time of the return of the Equipment to the Lessor on the Lease Term Expiration Date; provided, however that if any of the Termination Events or the Events of Default (including those in respect of the clause regarding the clause under this Article) occurs or continues on the Lease Term Expiration Date, such deposit shall be disposed pursuant to Clause 5 of Article 26.
- (1) If the Lessee returns all or any of the Units to the Lessor pursuant to this clause, at the time of such return, the Equipment shall be in as good condition as when delivered under Article 4 (in the case of the alternative equipment under Clause 2 of Article 12 or Article 15, in as good condition as when delivered thereunder after the supply thereof from Manufacturer to the Lessee) except for ordinary wear and tear and alterations, etc. made pursuant to Clause 2 of Article 12, Clause 4 or 5 of Article 14, or Article 15, and be capable of being used in an ordinary manner, and satisfy all the requirements of the return condition at the Lessor's determination in respect of the Equipment specified in Schedule 7 unless the Lessor previously waives the requirement to such conditions in writing.
 - (2) On and after the day on which the Lessee gives notice of return to the Lessor and the Agent under this Article, the Lessee shall promptly provide to the Lessor on demand the warranty certificate, specification and manual of the relevant Unit prepared by the Manufacturer, the suppliers of the Components or the maintenance service providers

-
- approved by the Manufacturer, as well as the maintenance records and the documents concerning installation, custody, use, operation, repair and maintenance of the relevant Unit, and if required by the Lessor, the documents and photographs evidencing the fulfillment of Item (1) of this clause prepared by the Manufacturer, the suppliers of the Components or the maintenance service providers approved by the Manufacturer.
- (3) The Lessee shall allow the Lessor, the Investor, the Agent and the prospective purchaser of the Equipment designated by the Lessor (the "Prospective Purchaser") and the related persons thereof to enter the offices, plants or other premises of the Lessee or the sublessee and inspect the Equipment in accordance with Article 17 prior to the return of all or any of the Units,.
 - (4) The Lessee shall pay to the Lessor the outstanding liabilities under the Related Agreements on the Return Date simultaneously with the return of the Equipment,.
 - (5) In the case that the Group B Equipment is returned, the Lessor may reserve the receiving the delivery of all or any of the Units on the Return Date by giving a notice to the Lessee no later than fourteen (14) days prior to the Return Date for not more than twelve (12) months from the Lease Term Expiration Date. In such case, the Lessee shall take custody of such Units with the due care of a prudent manager on the premises of its facilities unless otherwise agreed upon between the parties, and maintain the Performance, Etc. of the relevant Unit (including the cooperation in providing the various powers as required), and the provisions of Schedule 7 shall apply. The custody cost under this clause shall be borne by the Lessee in the case of the custody in the Lessee's own facilities and shall be as separately negotiated and agreed upon in the case of the custody outside the Lessee's own facilities. During such custody period, the Lessee may not use or take the profits of the Equipment and shall, in the case of damage to the relevant Unit for any reason, repair the same to the complete condition.
- 2 Notwithstanding the immediately preceding clause, the Lessor may request the Lessee to dispose all or any of the relevant Units from the day on which the Lessor receives the Lessee's notice of return with respect to the Unit under the immediately preceding clause up to the day which is thirty (30) days prior to the Return Date. In such case, the Lessee shall submit a consent letter to the Lessor and, at its own responsibility and cost, immediately dispose and scrap in Japan the relevant Unit required to be disposed. The Lessee shall comply with the laws and regulations (including environmental law) applicable to such disposal. If the Lessor is required to dispose in its own name under the relevant laws and regulations, the Lessee shall pay the expenses therefor and cooperate with the Lessor as required. In either case, the Lessor may request the Lessee to render the evidence of the disposal and other relevant documents or copies thereof.
 - 3 Upon return of the Equipment, the Lessor shall immediately execute and deliver to the Lessee a certificate of return in the form of Schedule 4.
 - 4 The Lessee shall bear the cost of maintenance, packing, removal, movement, custody, and others associated with the return of the Equipment.

Article 26 (Termination of Agreement)

- 1 If any one of the following events occurs, the Lessee's liabilities under this Agreement and all of the Individual Transactions shall automatically be accelerated and this Agreement and all of the Individual Transactions shall be terminated, without any notice or demand:
 - (1) the Lessee fails to make any payment of the Lease Rent and other monetary liabilities under the Related Agreements in any Individual Transaction;
 - (2) the Lessee fails to carry and maintain insurance as required in accordance with the provisions of this Agreement in any Individual Transaction;
 - (3) the Lessee fails to discharge any Encumbrances, Etc. in accordance with the provisions of this Agreement in any Individual Transaction;
 - (4) the Lessee becomes subject to the compulsory execution, provisional attachment, provisional disposition, petition for auction or disposition for default of any Tax and Other Public Charges, or any petition is filed in respect of the Lessee for the commencement of bankruptcy, civil rehabilitation, corporate rearrangement or corporate reorganization proceedings;
 - (5) the Lessee is ordered by a public agency to suspend or cease to carry on all or a substantial part of its business ;
 - (6) the Lessee suspends or reserves the payment to a person other than the Lessor or becomes subject to a dishonor proceeding by the Clearing House;
 - (7) the Lessee suspends the payment of Tax and Other Public Charges; or
 - (8) any material change has occurred to the Lessee's assets, creditworthiness and shareholders as of the Delivery Date.
- 2 If any one of the following events occur, Lessor may, by its demand, accelerate the Lessee's liabilities under this Agreement and all or any of the Individual Transactions and terminate this Agreement or all or any of the Individual Transactions:
 - (1) the Lessee suspends the payment under the Related Agreements or the Lessee breaches any of its obligations hereunder in any Individual Transaction (other than those listed in the provisions of the immediately preceding clause) and such breach is not remedied within five (5) Bank Business Days after it receives the written notice from the Lessor thereof;
 - (2) the Lessee determines to discontinue the semiconductor manufacturing business or resolves the assignment, suspension or discontinuation of all or a substantial part of its business or the dissolution of itself (excluding the case of merger);
 - (3) any change has occurred to the status of Fujitsu's shareholding ratio against the Lessee which is directly or indirectly 40% or more of the issued and outstanding voting common shares during the period from the execution date of this Agreement up to June 30, 2007;

-
- (4) any of the representations and warranties, covenants, proof or information provided by the Lessee hereunder is incorrect or vague;
 - (5) any acceleration has occurred to the liabilities of the Lessee other than those under the Related Agreements, or the Lessee fails to perform its guarantee obligation for the liabilities of a third party when due; or
 - (6) except for the preceding provisions of this clause, any adverse change has occurred or will possibly occur to the Lessee's business or financial condition and the acceleration of all liabilities is deemed required based on reasonable grounds in order to preserve the claims.
- 3 If this Agreement is terminated pursuant to the preceding two clauses, the Lessee shall immediately return the Equipment to the Lessor and immediately pay the outstanding liabilities as of the termination date such as the overdue and unpaid Lease Rent at the time of such termination, the default interests, the Stipulated Loss Value calculated as of the termination date under Clause 8 of Schedule 2, the Break Funding Cost and any other expense incurred by the Lessor. The Lessee shall not request the return of the Lease Rent already paid.
 - 4 If the Equipment is returned to the Lessor pursuant to the immediately preceding clause, the Lessor may sell the Equipment under the sales terms determined by the Lessor at its discretion and apply the proceeds of such sale after deducting any costs and expenses to the repayment of the liabilities under the immediately preceding clause. The Lessor may also evaluate the fair market value of the Equipment and apply the amount of such evaluation after deducting the relevant costs and expenses to the repayment of the liabilities under the immediately preceding clause. The Lessee shall not be released from the liabilities under the immediately preceding paragraph which remain after such application.
 - 5 In addition to the immediately preceding clause, in the case that this Agreement is terminated pursuant to Clause 1 or 2 of Article 26, if the advance payment under Clause 3 of Article 24 or the deposit under Clause 1 of Article 25 has been paid, the Lessor may apply all or any of such advance payment or deposit to the repayment of the Lessee's liabilities under Clause 3 of Article 26 without any specific notification to the Lessee.
 - 6 If the Lessee is required to return the Equipment pursuant to Clause 3 of Article 26, the conditions of the Equipment upon return, the method of such return, etc. shall be governed by the provisions of Article 25, unless otherwise specified in this Article 26.
 - 7 Notwithstanding the foregoing clauses in this Article 26, until the Lessor shall have sold the Equipment or the Unit pursuant to Clause 4 of Article 26, the Lessee shall have an option to purchase the Equipment or the Unit not yet sold by paying to the Lessor the Stipulated Loss Value calculated as of the termination date in respect of such Equipment or Unit, any unpaid Lease Rent and any other amount (including default interests) payable by the Lessee to the Lessor under Clause 3 of Article 26; provided that the Lessor's consent shall be required unless all of the Equipment is purchased. If the Lessee pays such amount to the Lessor and purchases the Equipment or the Unit, the Lessor shall assign the Equipment or the Unit to the Lessee on an "as-is, where-is" basis without any warranty of the Performance, Etc. or otherwise. Such assignment shall be made pursuant to the certificate of conveyance in the form of Schedule 5.

8 If the Lessee breaches any provisions under the Related Agreements, the Lessor shall be entitled to an injunctive claim and a specific performance claim against the Lessee, to a damage claim in respect of the liabilities or responsibilities suffered by the Lessor and to other remedies available under applicable law.

9 In any case, the non-exercise by the Lessor of all or any of its rights under this Agreement or the Related Agreements shall not be deemed as waiver thereof.

Article 27 (Default Interest)

If the Lessee defaults in any payment to the Lessor of any amount hereunder, it shall pay to the Lessor default interests for the period of such default at the rate of fourteen (14) % per annum (calculated on the basis of a year of 365 days and the actual number of days elapsed).

Article 28 (Transfer of Rights and Obligations)

Neither the Lessee nor the Lessor shall transfer or provide for security to any third party any of its rights to use the Equipment or any of its rights or obligations hereunder without the prior written consent of the other party; provided, however, that the Lessor may transfer the receivables hereunder and the Equipment for the security regarding the Loan Agreement and the Tokumei Kumiai Agreement to the Lenders and the Investor. The Lessee hereby consents to the creation of such security interest beforehand and shall cooperate with the Lessor for the preparation and delivery of the documents required by the Lessor. If the Equipment is assigned, the Lessee shall assume against the transferee the obligations set forth in Article 25 and any other obligations hereunder in respect of the Equipment or the Unit to be returned.

Article 29 (Notice)

All notices required under this Agreement shall be made in writing by mail, personal delivery or facsimile to the address specified in Schedule 6.

Article 30 (Amendment of Agreement)

If any amendment of this Agreement is required, both parties hereto shall negotiate in good faith and shall not amend this Agreement without written agreement.

Article 31 (Governing Law)

This Agreement shall be governed by and construed in accordance with the laws of Japan.

Article 32 (Competent Court)

The Tokyo District Court shall have exclusive jurisdiction in respect of any disputes arising out of or in connection with this Agreement.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Agreement in duplicate as of the day and year first above written and retain one original copy each.

/s/Tetsuya Nishikawa

SumiCrest Leasing Ltd.

/s/Shinji Suzuki

Spanion Japan Limited

Equipment List

1. Group A Equipment

With respect to each Individual Transaction, each Unit (including the Components) to be identified and notified by the Lessee to the Lessor pursuant to Clause 1 of Article 4 of the Purchase Agreement and Clause 1 of Schedule 2, and to be confirmed as Group A Equipment in the certificate of conveyance, the certificate of acceptance and the certificate of lease delivered on the Delivery Date of relevant Individual Transaction.

2. Group B Equipment

With respect to each Individual Transaction, each Unit (including the Components) to be identified and notified by the Lessee to the Lessor pursuant to Clause 1 of Article 4 of the Purchase Agreement and Clause 1 of Schedule 2, and to be confirmed as Group B Equipment in the certificate of conveyance, the certificate of acceptance and the certificate of lease delivered on the Delivery Date of relevant Individual Transaction.

Terms of Lease

1. Expected Delivery Date, last Delivery Date and identification of equipment

The Expected Delivery Date for each Individual Transaction shall be the last Bank Business Day of every month during the period from the execution date of this Agreement to the last day of February 2005 as notified as the Expected Delivery Date by the Lessee to the Lessor no later than five (5) Bank Business Days before (or, in respect of the first Individual Transaction, no later than 10:00 a.m. of two (2) Bank Business Days prior to the Expected Delivery Date), and the last Expected Delivery Date during such period shall be the final Expected Delivery Date under this Agreement. The Lessee shall identify the Unit subject to the relevant Individual Transaction by disclosing to the Lessor the serial numbers, specification and configuration, etc. thereof no later than 10th day of each month containing the relevant Expected Delivery Date (or the following Bank Business Day if such day is a holiday) and by obtaining the agreement from the Lessor as to the classification thereof into the Group A Equipment or the Group B Equipment.

2. Lease Term

With respect to each Individual Transaction, from the Delivery Date to the Lease Term Expiration Date.

3. Calculation of Lease Rent

With respect to each Individual Transaction, as described in the relevant certificate of lease.

4. Lease Rent Payment Date

With respect to each Individual Transaction, each Delivery Date shall be the first Lease Rent Payment Date, thereafter, the respective last days of June and December after each Delivery Date shall be the respective Lease Rent Payment Dates, and the final Lease Rent Payment Date shall be the last day of June 2007.

5. Lease Rent Calculation Period

In each Individual Transaction, the first Lease Rent Calculation Period shall commence on the Delivery Date (the first Lease Rent Payment Date) and end on the second Lease Rent Payment Date, and the subsequent Lease Rent Calculation Periods shall commence on the day immediately following the last day of the immediately preceding Lease Rent Calculation Period and end on the following Lease Rent Payment Date; provided, however, that in case of early termination of this Agreement, the Lease Rent Calculation Period shall end on the termination date.

-
6. Purchase Option Exercise Price
With respect to each Individual Transaction, as described in the relevant certificate of lease.
 7. Agent
Mizuho Corporate Bank, Ltd.
 8. Stipulated Loss Value
With respect to each Individual Transaction, as described in the relevant certificate of lease.
 9. Payment Method
The cash amount shall be remitted to the Lessor's account below (the remittance fee shall be borne by the Lessee).
Mizuho Corporate Bank, Ltd.,
Uchisaiwaicho Corporate Banking Division
Ordinary Deposit, Account Number: XXXXXXXX
Account Name: SumiCrest Leasing Ltd.
 10. Lenders
Mizuho Corporate Bank, Ltd.
Sumisho Lease Co., Ltd.
Tokyo Leasing Co., Ltd.
Fuyo General Lease Co., Ltd.
 11. Structure of Transaction
 - (1) The Lessor shall purchase and obtain the ownership of each Unit from the Lessee on the Delivery Date for each Individual Transaction pursuant to the Purchase Agreement.
 - (2) The Lessor shall, at its option and discretion from time to time, obtain a loan from the Lenders on each Delivery Date pursuant to the Loan Agreement for the purpose of financing the amount equal to around 85% of the Purchase Price.
 - (3) The Lessor shall, at its option and discretion, accept the investment from the Investor on each Delivery Date pursuant to the Tokumei Kumiai Agreement for the purpose of financing the amount equal to around 15% of the Purchase Price.
 - (4) The Lessor shall lease the relevant Unit to the Lessee on each Delivery Date pursuant to this Agreement.

-
12. Investor
Sumisho Lease Co., Ltd.
 13. Administrative Agent
Sumisho Lease Co., Ltd.

Certificate of Lease
([] th] Individual Transaction)

[date]

SumiCrest Leasing Ltd.

Spansion Japan Limited

1. We execute and deliver this Certificate of Lease to you for the purposes of certifying the lease of the equipment described in 1 below from you pursuant to the Master Lease Agreement dated January 5, 2005 between us.
2. We hereby confirm that the Purchase Price, the Delivery Date and the Lease Interest Rate, and the respective amounts of the Lease Rent, the Purchase Option Exercise Price and the Stipulated Loss Value set forth in Clauses 3, 6 and 8 of Schedule 2 to the Master Lease Agreement as agreed upon pursuant to Clause 3 of Article 4 of the Master Lease Agreement in respect of the Individual Transaction subject to this Certificate of Lease shall be as described in the document attached to this Certificate of Lease.
3. We hereby acknowledge that all of the provisions of the Master Lease Agreement mentioned in 1 above shall be applied to the Individual Transaction subject to this Certificate of Lease.

Particulars

1. Equipment Accepted
Details of Equipment: as described in the attachment
2. Delivery Date: [date]
3. Delivery Location: 6 Mondenmachi Kougyodanchi, Aizuwakamatsu-shi, Fukushima and 1-11 Aza Higashi Takaku, Oaza Takaku, Kouzashimachi, Aizuwakamatsu-shi, Fukushima (as described in the attachment with respect to the location for each equipment)

Certificate of Return

[date]

Spancion Japan Limited

SumiCrest Leasing Ltd.

We execute and deliver this Certificate of Return to you for the purposes of certifying the return of the equipment described in 1 below from you pursuant to the Master Lease Agreement dated January 5, 2005 between us.

Particulars

1. Equipment Returned

Details of Equipment: as described in the attachment

2. Return Date: [date]

3. Return Location: 6 Mondenmachi Kougyodanchi, Aizuwakamatsu-shi, Fukushima and 1-11 Aza Higashi Takaku, Oaza Takaku, Kouzashimachi, Aizuwakamatsu-shi, Fukushima (as described in the attachment with respect to the location for each equipment)

Certificate of conveyance

[date]

Spansion Japan Limited

SumiCrest Leasing Ltd.

We hereby certify the conveyance of the equipment through sale and purchase as of [date] as described below.

Particulars

1. Assignee: Spansion Japan Limited
2. Details of Equipment: as described in the attachment

[date]

Notification Address

SumiCrest Leasing Ltd.

Address: 2-1-1 Hitotsubashi, Chiyoda-ku, Tokyo 101-0003
Attention: c/o Sumisho Lease Co., Ltd., Electronics Equipment Department
Facsimile: 03-3515-1959

Spansion Japan Limited

Address: Shinjuku-chuokouen-bldg., 4-33-4 Nishi-shinjuku, Shinjukuku, Tokyo 160-0023
Attention: Spansion Japan Limited, Accounting Department
Facsimile: 03-5302-2674

Mizuho Corporate Bank, Ltd.

Address: 3-3, Marunouchi 1-chome, Chiyoda-ku, Tokyo, 100-8210
Attention: Mizuho Corporate Bank, Ltd.,
Corporate Banking Division No.10
Facsimile: 03-3214-0668

Requirements of Return Condition

If the Lessee returns all or any of the Units to the Lessor pursuant to Article 25 of the Lease Agreement, it shall fulfill all the requirements below in addition to the provisions of Article 25 of the Lease agreement except for those as previously specified by the Lessor in writing as not required.

When Lessee returns the Equipment pursuant to Clause 25 of the Lease, Lessee shall satisfy the following conditions, in addition to the conditions specified in Clause 25 of the Lease.

(A) Lessee shall no later than 180 days prior to the expiration or other termination of the lease (with regard to all but not less than all Equipment) provide, at its expense:

1. a detailed inventory of the Equipment (including the model and serial number of each major component thereof), including, without limitation, all internal circuit boards, module boards, and software features
2. a complete and current set of all manuals, blue prints, process flow diagrams, equipment configuration diagrams, operation, maintenance and repair records and other data (in English) reasonably requested by Lessor concerning the configuration and operation of the Equipment, and
3. a certification of the manufacturer or of a maintenance provider acceptable to Lessor that the Equipment (a) has been tested and is operating in accordance with manufacturer's specifications together with a report detailing the condition of the Equipment, the results of such test(s) and inspection(s) and all repairs that were performed as a result of such test(s) and inspection(s), and (b) that the Equipment qualifies for the manufacturer's used equipment maintenance program.

(B) Upon the request of Lessor and at the expense of Lessee, Lessee shall, not later than 180 days prior to the expiration or other termination of the Lease make the Equipment available for on-site operational inspection by persons designated by the Lessor who shall be qualified to inspect the Equipment in its operational environment.

(C) At the expense of Lessee, all Equipment shall be cleaned and treated with respect to rust, corrosion and appearance in accordance with manufacturer's recommendations and consistent with the best practices of dealers in used equipment similar to the Equipment in accordance with the applicable and relevant environmental laws, rules and regulations. At Lessor's option and at the expense of Lessee, Lessee shall (a) properly remove all Lessee installed markings which are not necessary for the operation, maintenance or repair of the Equipment; or (b) translate said markings to a language as specified by Lessor and reattach those markings.

(D) Lessee shall, at its expense, ensure all Equipment and Equipment operations conform to all applicable local, state, and federal laws, health and safety guidelines which may be in effect at the time of return, or as specified by Lessor.

(E) Lessee shall, at its expense, provide for the deinstallation, packing, transporting, installation, and certifying of the Equipment to include, but not limited to, the following: (1) the manufacturer's representative or such other person acceptable to the Lessor shall de-install all Equipment (including all wire, cable and mounting hardware) in accordance with the specifications of Lessor; (2) each item of Equipment will be returned with a certificate supplied by the manufacturer's representative qualifying the Equipment to be in good condition and (where applicable) to be eligible for the manufacturer's maintenance plan; the certificate of eligibility shall be transferable to another operator of the Equipment; this assignment shall extend to any software licensing or relicensing or other requirements of the manufacturer to enable an alternate user/purchaser of the Equipment to enjoy all rights and privileges as would the original purchaser of the Equipment directly from the manufacturer; (3) the Equipment shall be packed properly and in accordance to the Lessor's specifications; (4) upon return of the Equipment to the Lessor, provide transportation in a manner and to locations specified by Lessor; (5) without limitation, as applicable, all Equipment shall be professionally de-contaminated and certified for removal and transport by appropriate authorities, in accordance with industry standards, and consistent with the mode of transport specified by Lessor; all internal fluids and/or gases shall be purged and properly disposed of, any applicable reservoirs etc. shall be secured in accordance with manufacturers recommendations and in accordance with all applicable laws, rules, and regulations in Japan.

(F) At the expense of Lessee all Equipment shall conform to or be modified to conform to established standards in Japan; including, but not limited to wiring codes, software, keyboards, control consoles, all fittings and lines for gas, water, exhaust; Equipment labeling i.e. (operational, warning, safety labels) all current operational and service manuals. At the expense of Lessee accommodation of power requirements different from where originally shall be provided including but not limited to step-up/step-down transformers shall be fitted by original manufacturer or by certified party in compliance with manufacturers specifications.

(G) All tariffs, duties, taxes, import/export fees, bonding fees, bonded warehousing fees, licenses, permits, approvals, permissions, and/or freight forwarder fees without limitation shall be the responsibility of the Lessee.

(H) Lessee shall, at its expense, obtain and pay for a policy of transit insurance for the redelivery period in an amount equal to the replacement value of the Equipment and Lessor shall be named as the loss payee on all such policies of insurance;

(I) Lessee shall, at its expense, provide insurance and safe, secure storage for the Equipment for a period specified by Lessor after expiration of the Lease at locations acceptable to Lessor;

(J) With regard to any Equipment that has been modified or reconfigured by the Lessee, at Lessor's options, Lessee shall, at its expense, return or restore the Equipment to its original configuration, as specified by the manufacturer;

(K) Lessee shall, at its expense, allow Lessor the right to attempt resale of the Equipment from the Lessee's plant(s) with the Lessee's full cooperation and assistance, for a period of three hundred sixty five (365) days from the Lease expiration. Lessee will allow Lessor to show prospective buyers the Equipment while it is operational from Lessee's notification of its intent to return the Equipment up to the three hundred sixty fifth (365) day after the Lease expiration date at maximum. If an equipment auction is necessary, Lessor should be permitted to auction the Equipment on-site.

Covenants

The Lessee hereby covenants with the Lessor the following provisions in respect of the transactions for the lease of semiconductor manufacturing equipments set forth in certain agreements executed on January 5, 2005 from the execution date of this Agreement to the Lease Term Expiration Date repeatedly:

- (1) the Lessee shall maintain the Equipment, each Unit and the Components separately from the other equipment during the Lease Term;
- (2) the Lessee shall perform and comply with its obligations under the Related Agreements (for the purposes of this clause, including the Original Purchase Agreement) in accordance with their terms;
- (3) the Lessee shall give a notice to the Lessor of the occurrence of an Event of Default or any event which would materially adversely affect the Lessors' rights in the aggregate or the Lessee's performance of its obligations, in each case under the Related Agreements, promptly upon becoming aware thereof.
- (4) the Lessee shall obtain, maintain in full force and effect, and comply with the terms or restrictions, if any, of all consents, permissions, licenses, and approvals of public agencies or courts required by any such agencies or courts to be obtained by the Lessee in connection with the Related Agreements or for the continuous conduct of its business substantially as presently conducted;
- (5) the Lessee shall provide promptly to the Lessor, the Lenders and the Investor its financial statements and other information concerning its financial and business condition and the information concerning installation, condition, custody, use, maintenance, service, etc. of the Equipment which the Lessor shall reasonably request and in respect of which the Lessee shall not be specifically subject to the confidentiality duty;
- (6) the Lessee shall provide copy of its unaudited reports, etc. within sixty (60) days from the end of the first, second and third quarter;
- (7) the Lessee shall provide copy of its audited reports, etc. within one hundred and five (105) days after the closing of year end accounts;
- (8) the Lessee shall provide a document evidencing the fulfillment of the covenants in Clause 18 of this Schedule 8 within one hundred and five (105) days after the closing of year end accounts or within sixty (60) days from the end of the semi-annual period or quarter;
- (9) the Lessee shall provide copy of Spansion LLC's unaudited reports within sixty (60) days from the end of the first, second and third quarter of Spansion LLC;
- (10) the Lessee shall provide copy of Spansion LLC's audited reports within one hundred and five (105) days after the closing of year end accounts of Spansion LLC;
- (11) the Lessee shall, at the request of the Lessor or the Lenders and the Investor, immediately report in written concerning the Lessee's and Spansion LLC's assets, business or operations and provide facility necessary therefor;

-
- (12) the Lessee shall, at the written request of the Lessor, promptly provide to the Lessor the information concerning installation, condition, custody, use, maintenance, service, etc. of the Equipment to a reasonable extent;
- (13) the Lessee shall take such actions as permitted or contemplated by the Related Agreements and as reasonably requested by the Lessor which are necessary to create, transfer or change, or perfect the creation of, the rights under the Related Agreements to the extent such creation, transfer, change or perfection is made in accordance with the terms of such Related Agreements;
- (14) the Lessee shall, upon the reasonable request of the Lessor, cooperate with the Lessor, the Lenders and the Investor to achieve the purposes of the Related Agreements;
- (15) the Lessee shall treat the performance of all of its obligations under the Related Agreements to which it is a party as ranked at least *pari passu* with other unsecured liabilities (including the secured loan which would not be collected in full even after the disposition of the relevant security), without any preference one over the other, unless any law or regulation so requires;
- (16) the Lessee shall not make any loan to or from or any guarantee to a third party which would substantially affect the performance of its obligations under the Related Agreements to which it is a party;
- (17) the Lessee shall not conduct any transaction which would substantially affect the performance of its obligations under the Related Agreements to which the it is a party; and
- (18) the Lessee shall covenant to comply with the following financial restrictions:
- (i) the liabilities shall not exceed the assets in the non-consolidated balance sheet as at the end of each fiscal year and semi-annual period;
 - (ii) the the Adjusted Tangible Net Worth in each fiscal quarter shall not be less than 60 billion yen;
 - (iii) the total amount of net income plus depreciation in each of the following fiscal years shall not be less than the following amounts:
 - 2005 financial year: 21,125 million yen
 - 2006 financial year: 19,500 million yen
 - (iv) the ratio of (a) the net income plus depreciation to (b) the sum of interest expenses, the amount of scheduled repayments of borrowings including lease rentals, and maintenance capital expenditures for the Aizu Facility, for such period, shall not be less than the following percentages:
 - 2005 financial year: 120%
 - 2006 financial year: 120%

The term “Adjusted Tangible Assets” means all of the Lessee’s assets, determined on a consolidated basis (provided that if the Lessee does not prepare its financial statements on a consolidated basis, the stand-alone basis financial statements shall apply) in accordance with generally accepted accounting standards in Japan, other than (a) deferred assets, other than prepaid insurance and prepaid taxes, (b) patents, copyright, trademarks, trade names, franchises, goodwill, and other similar intangibles and (c) unamortized debt discounts and expenses.

The term “Adjusted Tangible Net Worth” means, at any time, the amount calculated as (a) the book value (after deducting the related depreciation, obsolescence, amortization, valuation, and other proper reserves as determined in accordance with generally accepted accounting standards in Japan) of the Adjusted Tangible Assets shown on the Lessee’s consolidated balance sheet (or the stand-alone basis balance sheet if the Lessee’s does not prepare its balance sheet on a consolidated basis) as of such time, prepared in accordance with that generally accepted accounting standards in Japan, less (b) the amount of the Lessee’s liabilities (including all contingencies and other potential liabilities required to be shown on such balance sheet) shown on such consolidated balance sheet (or the stand-alone basis balance sheet if the Lessee does not prepare its balance sheet on a consolidated basis).

The term “maintenance capital expenditures” means the capital expenditures for the purpose of maintaining and operating the existing equipments only. It shall not include the capital expenditures for the purpose of expanding the Lessee’s production capacity.

[Translation]

[execution copy]

MASTER PURCHASE AGREEMENT
Semiconductor Manufacturing Equipment

January 5, 2005

Spansion Japan Limited

SumiCrest Leasing Ltd.

Table of Contents

		<u>Page</u>
Article 1	(Definitions)	1
Article 2	(Purchase)	3
Article 3	(Purchase Price)	3
Article 4	(Delivery)	3
Article 5	(Related Documents)	4
Article 6	(Delay in Delivery)	5
Article 7	(Warranty Liability)	5
Article 8	(Insurance)	5
Article 9	(Default)	5
Article 10	(Termination by Non-commencement of the Lease)	5
Article 11	(Indemnification, Taxes and Other Public Charges, Costs)	6
Article 12	(Allocation of Risk)	6
Article 13	(Governing Law)	6
Article 14	(Jurisdiction)	6
Schedule 1	Equipment List	
Schedule 2	Term of Purchase	
Schedule 3	Certificate of Conveyance	
Schedule 4	Certificate of Acceptance	

MASTER PURCHASE AGREEMENT

This Master Purchase Agreement is made and entered into by and between Spansion Japan Limited (“Lessee”) and SumiCrest Leasing Ltd. (“Lessor”) on January 5, 2005.

WHEREAS:

1. The Lessee and the Lessor have agreed that the Lessor owns, and leases to the Lessee, the Equipment and the Lessee operates the Equipment.
2. Therefore, the Lessee and the Lessor shall hereby enter into this Agreement so that the Lessee sells the Equipment to the Lessor and the Lessor purchases the Equipment from the Lessee.

Article 1 (Definitions)

In this Agreement, except where the context (including whereas clauses and schedules) expressly requires otherwise, the following terms on the left hand side shall have the following meanings on the corresponding right hand side, and the terms defined in the Lease Agreement shall have the meaning defined thereunder.

Individual Transaction	Each individual transaction made under this Agreement and each certificate of conveyance.
Lease Agreement	Master Lease Agreement of the Equipment to be entered into by and between the Lessee and the Lessor on the same date of this Agreement and each individual agreement thereunder.
Equipment	Each and every equipment, including the Components, set forth in Schedule 1.
Components	Instruments and parts consisting of the Units and instruments, accessories, furnishings and parts (including single and collective comparable instruments, accessories, furnishings and parts) which are incorporated in or attached to the Equipment.
Units	Each set of the equipment (including the Components incorporated in or attached to such equipment) individually listed in the certificate of conveyance of the Equipment by asset serial number.
Manufacturer	Person listed as “Manufacturer” in the certificate of conveyance and the certificate of acceptance to be delivered on the Delivery Date of each Individual Transaction.

Delivery Date	With respect to each Individual Transaction, each day on which each Unit consisting of the Equipment is delivered under Article 4 hereof.
Expected Delivery Date	With respect to each Individual Transaction, each day specified as the expected delivery date in Clause 1 of Schedule 2 or the other Bank Business Day during the Delivery Period as agreed upon between the Lessee and the Lessor.
Delivery Period	Period commencing on the execution date of this Agreement and ending on the day specified as the final possible delivery date in Clause 1 of Schedule 2 or the period as agreed upon between the Lessee and the Lessor through the negotiation under Clause 1 of Article 6 hereof.
Delivery Location	Location in Japan where the Equipment or each Unit is located on each Expected Delivery Date notified by the Lessee to the Lessor no later than the Bank Business Day immediately preceding each Expected Delivery Date.
Purchase Price	With respect to each Individual Transaction, the purchase price set forth in Clause 2 of Schedule 2 concerning each Unit consisting of the Equipment.
Event of Total Loss	In respect of the Equipment, the Units or the Components consisting thereof, the occurrence of: (a) loss or disappearance; (b) damage or trouble which the Lessee reasonably determines, and an appraiser appointed by the Lessor confirms, to be beyond economic repair or reuse; or (c) the confiscation, condemnation, attachment or theft.
Performance, Etc.	Performance, structure, specification, practical value, exchange value, durability, operability, suitability for the purposes, legality and any other performance, function, nature, value and utility of the Equipment.
Encumbrances, Etc.	Ownership, right to possession, rental right, lease, mortgage, pledge, lien, security assignment, any conditional right or any option in respect of the foregoing and any other right to use and security interest of any kind, and the right based on the attachment or provisional attachment.
Losses, Etc.	Losses, damages, costs, fees, charges, liabilities, obligations, responsibilities, penalties, fines, default interests, claims and actions.
Tax and Other Public Charges	Present and future taxes, assessments, withholdings, fees, charges, burdens and any other

amounts under any entitlement whatsoever, as well as any penalties, fines, additions, delinquent charge or overdue interest in respect of the foregoing under any entitlement whatsoever, which may be imposed by any tax or other governmental authority (whether domestic or foreign).

Bank Business Day Day on which banks are open for business in Japan.

Article 2 (Purchase)

1. The Lessee shall sell each Unit consisting of the Equipment on each Expected Delivery Date pursuant to the provisions in this Agreement and the Lessor shall purchase such Units.
2. For the purpose of the sale and purchase under Clause 1 of Article 2 above, the Lessee shall obtain the complete ownership of each Unit consisting of the Equipment from the Manufacturer and accept the delivery thereof and satisfy the terms of delivery as set forth in Clause 5 of Article 4 hereof by the Expected Delivery Date.

Article 3 (Purchase Price)

1. The purchase price of the Equipment in each Individual Transaction under this Agreement shall be the amount as set forth in Clause 2 of Schedule 2.
2. The Lessor shall, in each Individual Transaction, pay the Purchase Price in the method set forth in Clause 3 of Schedule 2 in exchange for the conveyance and the delivery of each Unit consisting of the Equipment from the Lessee to the Lessor; provided that, in each Individual Transaction, the Purchase Price shall be paid by deducting the amount equal to the Lease Rent payable on the first Lease Rent Payment Date pursuant to the Lease Agreement.
3. In the event this Agreement is terminated pursuant to Article 9 or 10, the Lessee shall immediately refund to the Lessor the amount already paid under this Article 3 with interest at the rate of 14% per annum (calculated on the basis of a 365-day year) for the period from the date of such payment up to the date of refund.

Article 4 (Delivery)

1. In each Individual Transaction, the Lessee shall, no later than five (5) Bank Business Days prior to the Expected Delivery Date (or, in respect of the 1st Individual Transaction, no later than 10:00 a.m. of two (2) Bank Business Days prior to the Expected Delivery Date), give a notice of such date to the Lessor in respect of each Unit consisting of the Equipment by specifying the relevant Units by serial number, etc. in advance and objectively pursuant to Clause 1 of Schedule 2.
2. In each Individual Transaction, in exchange for the payment of the Purchase Price to the Lessee pursuant to Article 3, the Lessee shall deliver to the Lessor the relevant Units on each Expected Delivery Date at the Delivery Location, and the Lessor shall accept such delivery from the Lessee.

-
- 3 The delivery of each Unit pursuant to the immediately preceding clause shall be completed by the preparation and delivery to the Lessor by the Lessee of the certificate of conveyance in the form of Schedule 3 in exchange for the payment of the Purchase Price pursuant to Article 3 and the preparation and the delivery to the Lessee by the Lessor of the certificate of acceptance in the form of Schedule 4.
- 4 The Ownership of the Equipment shall transfer from the Lessee to the Lessor upon delivery of the certificate of conveyance pursuant to Clause 3 of Article 4.
- 5 In each Individual Transaction, each Unit shall satisfy the following conditions at the time of the delivery of such Unit from the Lessee to the Lessor pursuant to this Article 4; provided, however, in the event the Lessor waives the satisfaction of all or a part of these conditions in writing, such conditions shall not be the conditions of delivery of the Equipment under this Article 4, in which case, the Lessee shall not be exempted from the obligation to satisfy such conditions as soon as possible after the delivery.
- (1) The Lessee has obtained the complete ownership of the relevant Unit from the Manufacturer.
 - (2) Except for those approved by the Lessor in writing, there are no Encumbrances, Etc. for the third party.
 - (3) All works to ensure the Performance, Etc. required by the Lessee in respect of the relevant Unit as the subject of the Lease Agreement have been completed and the Lessee, after the inspection thereof by itself, has confirmed that the Equipment is appropriate for the Lessee's use.
 - (4) There are no events that constitute the Event of Total Loss or that the Lessor reasonably determines the expected occurrence of Event of Total Loss with respect to the relevant Unit.
- 6 The Lessee shall, upon the reasonable request from the Lessor, grant to the Lessor the reasonable opportunity so that the Lessor or the person appointed by the Lessor may, prior to the delivery of the relevant Unit and at the Delivery Location, inspect the relevant Unit to confirm that the relevant Unit satisfy the conditions of Clause 5 of Article 4.
- 7 The Lessor's obligation to purchase the Equipment pursuant to this Agreement shall be subject to the satisfaction of all of the following conditions as of each Expected Delivery Date, unless the Lessor waives the satisfaction of these conditions prior to the completion of the delivery:
- (1) The relevant Unit satisfies the conditions of Clause 5 of Article 4.
 - (2) The Lessor has received the documents set forth in Article 5.
 - (3) The conditions as set forth in Article 5 of the Lease Agreement (excluding the condition regarding the completion of the purchase under this Agreement) have been satisfied.

Article 5 (Related Documents)

The Lessee shall submit to the Lessor the documents reasonably required by the Lessor at the time of each delivery of the Equipment

Article 6 (Delay in Delivery)

- 1 If it is required to change any Expected Delivery Date, or if it is expected that the delivery of any Units would delay or be impossible, the Lessee or the Lessor and Lessee shall negotiate with each other in good faith.
- 2 The Lessee shall be liable for any and all costs incurred by reason of the change in the Expected Delivery Date or the delay or impossibility in the delivery, and for any damages and other obligations against the third party arising therefrom (including the Break Funding Cost) and hold the Lessor harmless therefrom.

Article 7 (Warranty Liability)

- 1 The Lessee shall warrant and ensure to the Lessor that the Equipments satisfy the conditions of Clause 5 of Article 4 on each Delivery Date and that the Lessor shall be capable of obtaining the complete ownership of the Equipment without any Encumbrances, Etc. against the third party pursuant to this Agreement.
- 2 The Lessee shall, at its responsibility and cost, be obligated to promptly respond to the infringement or the claims of Encumbrances, Etc. from any third party on the Equipment or the ownership or the right to use thereof, and to prevent or exclude the same without delay.

Article 8 (Insurance)

The Lessee shall, at its responsibility, have the Equipment insured pursuant to Article 19 of the Lease Agreement.

Article 9 (Default)

- 1 In the event the Lessee or the Lessor fails to perform the obligations under this Agreement and fails to cure such default within five (5) Bank Business Days from the written request from the other party, the other party may terminate this Agreement in writing.
- 2 In the event this Agreement is terminated pursuant to immediately preceding clause, the terminating party may claim compensation for damage arising out of the default against the defaulting party, except in the event that the default of the Lessor is due to the interruption of the financial market.

Article 10 (Termination by Non-commencement of the Lease)

- 1 With respect to each Individual Transaction, if the delivery of the Equipment pursuant to Article 4 is incapable or the lease of the Equipment pursuant to the Lease Agreement is not commenced (except in the case that such non-commencement is due to the event attributable to the Lessor), such Individual Transaction shall be automatically terminated for all Units subject to such Individual Transaction regardless of whether the payment of the Purchase Price pursuant to Article 3 or the delivery of the Equipment pursuant to Article 4 have been completed.
- 2 In the event the termination of each Individual Transaction pursuant to the immediately preceding clause is due to the default of the Lessee or the

Lessor, the terminating party may claim compensation for damage arising out of the default to the defaulting party, except in the event that the default of the Lessor is due to the interruption of the financial market.

Article 11 (Indemnification, Taxes and Other Public Charges, Costs)

- 1 The provisions of Article 22 of the Lease Agreement shall govern with respect to the incurrence and indemnification of the Taxes and Other Public Charges and Losses, etc.
- 2 With respect to the expenses for the preparation and execution of this Agreement, the attorney's fees shall be borne by each party.

Article 12 (Allocation of Risk)

With respect to the purchase hereunder, the Lessee shall bear all risks and any costs incurred in connection with the loss (including the Event of Total Loss) of, or the damage to, the Equipment, Units or the Components arising up to the delivery of the Equipment from the Lessee to the Lessor pursuant to Article 4.

Article 13 (Governing Law)

This Agreement shall be governed by, and construed in accordance with, the laws of Japan.

Article 14 (Jurisdiction)

Any and all disputes arising out of, or in connection with this Agreement shall be subject to the exclusive jurisdiction of the Tokyo District Court.

IN WITNESS WHEREOF, the Lessee and the Lessor have executed this Agreement in duplicate as of the day and year first above written and retain one original copy each.

/s/Shinji Suzuki

Spanion Japan Limited

/s/Tetsuya Nishikawa

SumiCrest Leasing Ltd.

Equipment List

With respect to each Individual Transaction, each Unit, including the Components, consisting of the Group A Equipment and the Group B Equipment to be specified pursuant to Clause 1 of Article 4 and Clause 1 of Schedule 2, and to be confirmed by the certificate of conveyance and the certificate of acceptance to be delivered on the Delivery Date of such Individual Transaction.

Terms of Purchase

1. The Expected Delivery Date, the Final Possible Delivery Date and the Method Specifying the Subject Equipment

The Expected Delivery Date for each Individual Transaction shall be the final Bank Business Day of each month within the period from the date of execution of this Agreement up to the last day of February 2005, notified by the Lessee to the Lessor as the Expected Delivery Date no later than five (5) Bank Business Days prior to such date (or, in respect of the 1st Individual Transaction, no later than 10:00 a.m. of two (2) Bank Business Days prior to the Expected Delivery Date) and the final Expected Delivery Date during such period shall be the Final Possible Delivery Date under this Agreement. The Lessee shall specify the Units subject to the relevant Individual Transaction by disclosing the serial numbers, specification and composition, etc. thereof and upon agreement with the Lessor on the classification thereof into either the Group A Equipment or the Group B Equipment prior to the 10th day (or the following Bank Business Day if such date is a holiday) of every month in which such Expected Delivery Date falls on.

2. Purchase Price

With respect to each Individual Transaction, the purchase price of each Unit consisting of the Equipment shall be the total of the purchase price of each Unit subject to such Individual Transaction which is specified in the certificate of conveyance and the certificate of acceptance delivered in such Individual Transaction. The aggregate amount of the purchase price (net amount excluding tax) shall not be more than 8,200,000,000 yen.

3. Method of Payment

Payment shall be made by remittance to the following account of the Lessee in cash.

(Remittance fee shall be borne by the Lessee)

Mizuho Corporate Bank, Ltd.	Uchisaiwaicho Corporate Banking Division
Ordinary Deposit Account Number:	XXXXXXX
Account Name:	Spansion Japan Limited

Certificate of Conveyance
([] th Individual Transaction)

[date]

SumiCrest Leasing Ltd.

Spanion Japan Limited

We hereby convey the Equipment below pursuant to the Master Purchase Agreement dated January 5, 2005 between us.

Particulars

1. Conveyed Equipment: as described in the attachment hereto
2. Date of Conveyance: [date]
3. Location of Conveyance: 6, Mondencho Kogyo Danchi, Aizuwakamatsu-shi, Fukushima and
1-11, Aza Higashi Takaku, Oaza Takaku,
Kouzashi-machi, Aizuwakamatsu-shi, Fukushima
(as described in the attachment hereto with
respect to the location for each equipment)

Certificate of Acceptance
([] th Individual Transaction)

[date]

Spansion Japan Limited

SumiCrest Leasing Ltd.

We have accepted the delivery of the Equipment below from you pursuant to the Master Purchase Agreement dated January 5, 2005 between us.

Particulars

1. Accepted Equipment: as described in the attachment
2. Date of Acceptance: [date]
3. Location of Acceptance: 6, Mondencho Kogyo Danchi,
Aizuwakamatsu-shi, Fukushima and
1-11, Aza Higashi Takaku, Oaza Takaku,
Kouzashi-machi, Aizuwakamatsu-shi, Fukushima
(as described in the attachment hereto with
respect to the location for each equipment)

ADVANCED MICRO DEVICES, INC.
LIST OF SUBSIDIARIES
(as of 12/26/04)

<u>Name of Subsidiary</u>	<u>State or Jurisdiction in Which Incorporated or Organized</u>
<u>Domestic Subsidiaries</u>	
Advanced Micro Ltd.*	California
AMD Corporation*	California
AMD (EMEA) LTD.	Delaware
AMD Far East Ltd.	Delaware
AMD International Sales & Service, Ltd.	Delaware
AMD Texas Properties, LLC	Delaware
AMD Latin America Ltd.	Delaware
AMD Saxony LLC	Delaware
Cerium Laboratories LLC	Delaware
Coatue Corporation	Delaware
Spansion LLC ⁽¹⁾	Delaware
Spansion International, Inc. ⁽²⁾	Delaware
AMD (US) Holdings, Inc.	Delaware
AMD Investments, Inc. ⁽³⁾	Delaware
AMD FAB 36 LLC	Delaware
<u>Foreign Subsidiaries</u>	
Advanced Micro Devices Belgium N.V.	Belgium
AMD South America LTDA ⁽⁴⁾	Brazil
Advanced Micro Devices (Canada) Limited	Canada
Advanced Micro Devices (China) Co. Ltd.	China
AMD Technologies (China) Co. Ltd. ⁽¹²⁾	China
Spansion (China) Limited ⁽⁵⁾	China
AMD International Trading (Shanghai) Co. Ltd.	China
Advanced Micro Devices S.A.	France
Spansion (EMEA) ⁽²⁾	France
Advanced Micro Devices GmbH	Germany
AMD FAB 36 Limited Liability Company & Co. KG ⁽⁶⁾	Germany
AMD FAB 36 Admin GmbH ⁽⁷⁾	Germany
AMD FAB 36 Holding GmbH	Germany
AMD Saxony Limited Liability Company & Co. KG ⁽⁸⁾	Germany
AMD Saxony Admin GmbH ⁽⁹⁾	Germany
AMD Saxony Holding GmbH	Germany
AMD India Engineering Centre Private Limited	India
Advanced Micro Devices S.p.A.	Italy
AMD Japan Ltd.	Japan
Spansion Japan Limited ⁽²⁾	Japan
Advanced Micro Devices Sdn. Bhd.	Malaysia
Advanced Micro Devices Export Sdn. Bhd. ⁽¹⁰⁾	Malaysia
Spansion (Penang) Sdn.Bhd. ⁽²⁾	Malaysia
Spansion (Kuala Lumpur) Sdn. Bhd. ⁽²⁾	Malaysia
AMD (Netherlands) B.V. ⁽¹¹⁾	Netherlands
Advanced Micro Devices (Singapore) Pte. Ltd.	Singapore
Spansion Holdings (Singapore) Pte. Ltd. ⁽²⁾	Singapore
Advanced Micro Devices, AB	Sweden
Spansion (Thailand) Limited ⁽²⁾	Thailand
Advanced Micro Devices (U.K.) Limited	United Kingdom

⁽¹⁾ Subsidiary of AMD Investments, Inc.

⁽²⁾ Subsidiary of Spansion LLC

⁽³⁾ Subsidiary of AMD (US) Holdings, Inc.

⁽⁴⁾ Subsidiary of AMD International Sales & Service, Ltd.

⁽⁵⁾ Subsidiary of Spansion Holdings (Singapore) Pte. Ltd.

⁽⁶⁾ Partnership in which AMD Fab 36 LLC is the general partner and AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH are the limited partners

⁽⁷⁾ Subsidiary of AMD Fab 36 Holding GmbH

⁽⁸⁾ Partnership in which AMD Saxony LLC is the general partner and AMD Saxony Holding GmbH and AMD Saxony Admin GmbH are the limited partners

⁽⁹⁾ Subsidiary of AMD Saxony Holding GmbH

⁽¹⁰⁾ Subsidiary of Advanced Micro Devices Sdn. Bhd.

⁽¹¹⁾ Subsidiary of Advanced Micro Devices Export Sdn. Bhd.

⁽¹²⁾ Subsidiary of Advanced Micro Devices (China) Co. Ltd.

* Inactive entity

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the following Registration Statements of Advanced Micro Devices, Inc. of our reports dated February 21, 2005, with respect to the consolidated financial statements and schedule of Advanced Micro Devices, Inc., Advanced Micro Devices, Inc. management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Advanced Micro Devices, Inc. included in this Annual Report (Form 10-K) for the year ended December 26, 2004:

- Registration Statements on Forms S-8 (Nos. 33-10319, 33-26266, 33-36596 and 33-46578) pertaining to the Advanced Micro Devices, Inc. 1982 and 1986 Stock Option Plans and the 1980 and 1986 Stock Appreciation Rights Plans;
- Registration Statements on Forms S-8 (Nos. 33-46577 and 33-55107) pertaining to the Advanced Micro Devices, Inc. 1992 Stock Incentive Plan;
- Registration Statement on Form S-8 (No. 333-00969) pertaining to the Advanced Micro Devices, Inc. 1991 Employee Stock Purchase Plan and to the 1995 Stock Plan of NexGen, Inc.;
- Registration Statements on Forms S-8 (Nos. 333-04797 and 333-57525) pertaining to the Advanced Micro Devices, Inc. 1996 Stock Incentive Plan;
- Registration Statement on Form S-8 (No. 333-60550) pertaining to the Advanced Micro Devices, Inc. 1996 Stock Incentive Plan and the Advanced Micro Devices, Inc. 2000 Employee Stock Purchase Plan;
- Registration Statement on Form S-8 (No. 333-68005) pertaining to the Advanced Micro Devices, Inc. 1998 Stock Incentive Plan;
- Registration Statement on Form S-8 (No. 333-40030) pertaining to the Advanced Micro Devices, Inc. 1996 Stock Incentive Plan and the Advanced Micro Devices, Inc. 2000 Employee Stock Purchase Plan;
- Registration Statements on Form S-8 (Nos. 333-55052 and 333-74896) pertaining to the Advanced Micro Devices, Inc. 2000 Stock Incentive Plan;
- Registration Statement on Form S-8 (No. 333-108217) pertaining to the Advanced Micro Devices, Inc. 2000 Employee Stock Purchase Plan
- Registration Statement on Form S-3 (No. 333-47243), as amended, pertaining to debt securities, preferred stock, common stock, equity warrants and debt warrants issued or issuable by Advanced Micro Devices, Inc.;
- Registration Statement on Form S-3 (No. 333-45346) pertaining to debt securities, preferred stock, common stock, equity warrants and debt warrants issued or issuable by Advanced Micro Devices, Inc.;
- Post-Effective Amendment No. 1 to the Registration Statement on Form S-8 (No. 33-95888-99) pertaining to the 1995 Stock Plan of NexGen, Inc. and the NexGen, Inc. 1987 Employee Stock Plan;
- Post-Effective Amendment No. 1 on Form S-8 to the Registration Statement on Form S-4 (No. 33-64911) pertaining to the 1995 Employee Stock Purchase Plan of NexGen, Inc., the 1995 Stock Plan of NexGen, Inc. and the NexGen, Inc. 1987 Employee Stock Plan;
- Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;

-
- Amendment No. 1 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Amendment No. 2 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Amendment No. 3 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Amendment No. 4 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 2 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 3 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 4 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 5 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 6 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 7 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 8 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 9 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Post-Effective Amendment No. 10 to the Registration Statement on Form S-3 (No. 333-84028) pertaining to the 4.75% convertible debentures;
 - Registration Statement on Form S-8 (No. 333-115474) pertaining to the Advanced Micro Devices, Inc. 2004 Equity Incentive Plan; and
 - Registration Statement on Form S-4 (No. 333-122174) pertaining to the 7.75% Senior Notes.

/s/ ERNST & YOUNG LLP

San Jose, California
February 23, 2005

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Hector de J. Ruiz and Robert J. Rivet, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign Advanced Micro Devices, Inc.'s Annual Report on Form 10-K for the fiscal year ended December 26, 2004, and any and all amendments thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Hector de J. Ruiz</u> Hector de J. Ruiz	Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)	Feb. 20, 2005
<u>/s/ Robert J. Rivet</u> Robert J. Rivet	Executive Vice President, Chief Financial Officer (Principal Financial Officer)	Feb. 23, 2005
<u>/s/ W. Michael Barnes</u> W. Michael Barnes	Director	Feb. 20, 2005
<u>/s/ Charles M. Blalack</u> Charles M. Blalack	Director	Feb. 19, 2005
<u>/s/ R. Gene Brown</u> R. Gene Brown	Director	Feb. 22, 2005
<u>/s/ Bruce L. Claflin</u> Bruce L. Claflin	Director	Feb. 21, 2005
<u>/s/ H. Paulett Eberhart</u> H. Paulett Eberhart	Director	Feb. 23, 2005
<u>/s/ David J. Edmondson</u> David J. Edmondson	Director	Feb. 22, 2005
<u>/s/ Robert B. Palmer</u> Robert B. Palmer	Director	Feb. 23, 2005
<u>/s/ Leonard M. Silverman</u> Leonard M. Silverman	Director	Feb. 18, 2005
<u>/s/ Morton L. Topfer</u> Morton L. Topfer	Director	Feb. 23, 2005

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 annual report on Form 10-K 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 company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company 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 company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the company's internal control over financial reporting that occurred during the company's most recent fiscal quarter (the company's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company'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 company'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 company's internal control over financial reporting.

Date: February 24, 2005

/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 annual report on Form 10-K 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 company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company 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 company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.;
 - c) evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the company's internal control over financial reporting that occurred during the company's most recent fiscal quarter

(the company's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company'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 company'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 company's internal control over financial reporting.

Date: February 24, 2005

/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 Annual Report on Form 10-K of the Company for the annual period ended December 26, 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: February 24, 2005

/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 Annual Report on Form 10-K of the Company for the annual period ended December 26, 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: February 24, 2005

/s/ Robert J. Rivet

Robert J. Rivet
Executive Vice President and
Chief Financial Officer