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

Form 10-Q

(Mark One)

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

For the quarterly period ended September 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)

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

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

94088
(Zip Code)

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

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

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

Indicate the number of shares outstanding of the registrant's common stock, \$0.01 par value as of November 1, 2004: 367,068,203.

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PART I. FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS

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

(Thousands except per share amounts)

	Quarter Ended		Nine Months Ended	
	September 26, 2004	September 28, 2003	September 26, 2004	September 28, 2003
Net sales	\$ 988,560	\$ 766,173	\$ 2,876,699	\$ 2,125,989
Net sales to related party (see Note 3)	250,899	187,586	861,030	187,586
Total net sales	1,239,459	953,759	3,737,729	2,313,575
Expenses:				
Cost of sales	738,026	626,880	2,289,935	1,548,556
Research and development	230,896	213,997	681,807	625,572
Marketing, general and administrative	202,179	151,111	561,389	424,500
Restructuring and other special charges, net	—	(8,000)	2,514	(5,854)
	1,171,101	983,988	3,535,645	2,592,774
Operating income (loss)	68,358	(30,229)	202,084	(279,199)
Interest income and other, net	2,502	493	11,280	12,203
Interest expense	(25,148)	(26,848)	(83,258)	(79,017)
Income (loss) before minority interest, income taxes, and equity in net income of Manufacturing Joint Venture	45,712	(56,584)	130,106	(346,013)
Minority interest in loss of subsidiary	3,008	25,353	1,832	25,353
Income (loss) before income taxes and equity in net income of Manufacturing Joint Venture	48,720	(31,231)	131,938	(320,660)
Provision for income taxes	4,872	—	10,819	2,936
Income (loss) before equity in net income of Manufacturing Joint Venture	43,848	(31,231)	121,119	(323,596)
Equity in net income of Manufacturing Joint Venture	—	—	—	5,913
Net income (loss)	\$ 43,848	\$ (31,231)	\$ 121,119	\$ (317,683)
Net income (loss) per common share (see Note 5):				
Basic	\$ 0.12	\$ (0.09)	\$ 0.34	\$ (0.92)
Diluted	\$ 0.12	\$ (0.09)	\$ 0.32	\$ (0.92)
Shares used in per share calculation:				
Basic	355,254	347,334	353,412	346,222
Diluted	417,576	347,334	418,531	346,222

See accompanying notes.

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ADVANCED MICRO DEVICES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS

(Thousands except share amounts)

	September 26, 2004	December 28, 2003*
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 776,588	\$ 968,183
Compensating balance	214,821	217,621
Short-term investments	193,768	127,563
	<hr/>	<hr/>
Total cash and cash equivalents, compensating balance and short-term investments	1,185,177	1,313,367
Accounts receivable	638,069	397,644
Accounts receivable from related party (see Note 3 and Note 11)	175,609	187,898
Allowance for doubtful accounts	(22,928)	(20,658)
	<hr/>	<hr/>
Total accounts receivable, net	790,750	564,884
Inventories:		
Raw materials	60,184	42,925
Work-in-process	534,487	504,861
Finished goods	212,562	149,872
	<hr/>	<hr/>
Total inventories	807,233	697,658
Deferred income taxes	111,452	102,651
Prepaid expenses and other current assets	156,628	177,145
	<hr/>	<hr/>
Total current assets	3,051,240	2,855,705
Property, plant and equipment:		
Land	60,614	61,002
Buildings and leasehold improvements	2,143,634	2,277,947
Equipment	7,365,028	7,581,241
Construction in progress	567,443	152,204
	<hr/>	<hr/>
Total property, plant and equipment	10,136,719	10,072,394
Accumulated depreciation and amortization	(6,258,822)	(6,223,902)
	<hr/>	<hr/>
Property, plant and equipment, net	3,877,897	3,848,492
Other assets	353,302	345,575
	<hr/>	<hr/>
Total assets	\$ 7,282,439	\$ 7,049,772
	<hr/>	<hr/>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 557,452	\$ 460,271
Accounts payable to related party (see Note 3)	43,456	32,345
Accrued compensation and benefits	190,625	160,644
Accrued liabilities	303,802	327,122
Restructuring accruals, current portion	18,641	29,770
Income taxes payable	23,715	41,370
Deferred income on shipments to distributors	128,061	72,376
Current portion of long-term debt and capital lease obligations	216,027	193,266
Other current liabilities	102,147	90,533
	<hr/>	<hr/>
Total current liabilities	1,583,926	1,407,697
Deferred income taxes	147,514	157,690
Long-term debt and capital lease obligations, less current portion	1,787,017	1,859,674
Long-term debt payable to related party (see Note 3)	40,000	40,000
Other long-term liabilities	353,137	428,761
Minority interest	799,403	717,640
Commitments and contingencies		
Stockholders' equity:		
Capital stock:		
Common stock, par value \$0.01; 750,000,000 shares authorized; shares issued: 362,674,508 on September 26, 2004 and 357,119,809 on December 28, 2003; shares outstanding: 355,837,127 on September 26, 2004 and 350,252,591 on December 28, 2003	3,556	3,502
Capital in excess of par value	2,109,832	2,051,254
Treasury stock, at cost (6,837,381 shares on September 26, 2004 and 6,867,218 shares on December 28, 2003)	(92,048)	(92,421)
Retained earnings	338,684	217,891
Accumulated other comprehensive income	211,418	258,084
	<hr/>	<hr/>
Total stockholders' equity	2,571,442	2,438,310
	<hr/>	<hr/>
Total liabilities and stockholders' equity	\$ 7,282,439	\$ 7,049,772

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

See accompanying notes.

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

	Nine Months Ended	
	September 26, 2004	September 28, 2003
Cash flows from operating activities:		
Net income (loss)	\$ 121,119	\$ (317,683)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Minority interest in loss of subsidiary	(1,832)	(25,353)
Depreciation	860,763	677,124
Amortization	34,341	31,228
Impairment of equity investment	—	2,339
Recovery of (provision for) doubtful accounts	(230)	5,023
Change in deferred income taxes	(14,946)	15,199
Restructuring and other special charges, net	2,514	(4,295)
Foreign grant and subsidy income	(66,242)	(49,359)
Net (gain) loss on disposal of property, plant and equipment	(6,294)	19,947
Net gain realized on sale of available-for-sale securities	(7,188)	(3,736)
Compensation recognized under employee stock plans	835	1,361
Undistributed income of joint venture	—	(5,913)
Recognition of deferred gain on sale of building	(1,261)	(1,260)
Tax benefit (expense) allocated to minority interest	1,749	(1,949)
Changes in operating assets and liabilities:		
(Increase) decrease in accounts receivable	(235,922)	123,224
Decrease (increase) in accounts receivable from related party	12,289	(208,130)
Increase in inventories	(112,422)	(72,164)
Decrease in prepaid expenses	43,468	14,837
(Increase) decrease in other assets	(15,179)	26,343
(Decrease) increase in income taxes payable	(17,655)	25,791
Refund of customer deposits under long-term purchase agreements	(20,500)	(26,500)
Net increase (decrease) in accounts payable, accrued liabilities and other liabilities	105,666	(334,518)
Increase in accounts payable to related party	11,110	3,683
Increase in accrued compensation and benefits	30,150	11,755
Net cash provided by (used in) operating activities	724,333	(93,006)
Cash flows from investing activities:		
Net cash acquired from formation and consolidation of Spansion LLC	—	147,616
Purchases of property, plant and equipment	(969,758)	(407,535)
Proceeds from sale of property, plant and equipment	24,347	26,670
Business acquisitions, net of cash acquired	—	(6,265)
Purchases of available-for-sale securities	(197,187)	(970,391)
Proceeds from sale and maturity of available-for-sale securities	130,807	1,500,460
Net cash (used in) provided by investing activities	(1,011,791)	290,555
Cash flows from financing activities:		
Proceeds from borrowings	105,184	47,350
Payments on debt, capital lease obligations and other	(204,078)	(85,481)
Proceeds from foreign grants and subsidies	4,910	142,029
Proceeds from sale leaseback transactions	44,141	244,647
Proceeds from limited partners' contribution in subsidiary (see Note 12)	90,888	—
Proceeds from issuance of stock	57,841	17,149
Net cash provided by financing activities	98,886	365,694
Effect of exchange rate changes on cash and cash equivalents	(3,023)	33,994
Net (decrease) increase in cash and cash equivalents	(191,595)	597,237
Cash and cash equivalents at beginning of period	968,183	397,698
Cash and cash equivalents at end of period	\$ 776,588	\$ 994,935
Non-cash financing activities		
Equipment sale leaseback transaction	\$ 34,366	\$ 284,297
Non-cash investing activities		
Formation and consolidation of Spansion LLC:		
Total non-cash net assets of Manufacturing Joint Venture contributed by venture partners	—	\$ 768,000
Total non-cash net assets contributed by Fujitsu	—	\$ 154,000

See accompanying notes.

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ADVANCED MICRO DEVICES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
September 26, 2004

1. Basis of Presentation

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

The consolidated financial statements of the Company for periods subsequent to June 29, 2003 include Spansion LLC, which was formed by the Company and Fujitsu Limited, effective June 30, 2003. As the Company has a 60 percent controlling equity interest in Spansion LLC, it began consolidating the results of Spansion LLC's operations on June 30, 2003, the effective date of its formation.

The Company uses a 52- to 53-week fiscal year ending on the last Sunday in December. The quarters and nine months ended September 28, 2003 and September 26, 2004 each included 13 weeks and 39 weeks. Certain prior period amounts have been reclassified to conform to the current period presentation.

2. Stock-Based Incentive Compensation Plans

The Company has elected to use the intrinsic value method under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (APB 25), as permitted by Statement of Financial Accounting Standard No. 123, "Accounting for Stock-Based Compensation" (SFAS 123), subsequently amended by SFAS 148, "Accounting for Stock-Based Compensation— Transition and Disclosure" to account for stock options issued to its employees under its 2004 Equity Incentive Plan and its prior stock option plans, and amortizes deferred compensation, if any, ratably over the vesting period of the options. Compensation expense resulting from the issuance of fixed term stock option awards is measured as the difference between the exercise price of the option and the fair market value of the underlying share of Company stock subject to the option on the award's grant date. The Company also makes pro forma fair value disclosures required by SFAS 123 which reflect the impact on net income (loss) and net income (loss) per share had the Company applied the fair value method of accounting for its stock-based awards to employees. The Company estimates the fair value of its stock-based awards to employees using a Black-Scholes option pricing model. The pro forma effects on net income (loss) and net income (loss) per share are as follows for the quarters and the nine months ended September 28, 2003 and September 26, 2004.

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	Quarter Ended		Nine Months Ended	
	September 26, 2004	September 28, 2003	September 26, 2004	September 28, 2003
	(in thousands except per share amounts)			
Net income (loss) - as reported	\$ 43,848	\$ (31,231)	\$ 121,119	\$ (317,683)
Plus: compensation expense recorded under APB 25	224	366	820	1,361
Less: SFAS 123 compensation expenses	(21,840)	(19,148)	(86,487)	(58,307)
Net income (loss) - pro forma	\$ 22,232	\$ (50,013)	\$ 35,452	\$ (374,629)
Basic net income (loss) per common share—as reported	\$ 0.12	\$ (0.09)	\$ 0.34	\$ (0.92)
Diluted net income (loss) per common share—as reported	\$ 0.12	\$ (0.09)	\$ 0.32	\$ (0.92)
Basic net income (loss) per common share—pro forma	\$ 0.06	\$ (0.14)	\$ 0.10	\$ (1.08)
Diluted net income (loss) per common share—pro forma	\$ 0.06	\$ (0.14)	\$ 0.10	\$ (1.08)

3. Related-Party Transactions

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

	Quarter Ended	Nine Months Ended
	September 26, 2004	September 26, 2004
	(in thousands)	
Sales to Fujitsu	\$ 250,899	\$ 861,030
Royalty expenses to Fujitsu	4,137	14,062
Distributor commission to Fujitsu	16,445	54,257
Service fees to Fujitsu	8,158	24,954
	As of September 26, 2004	As of December 28, 2003
	(in thousands)	
Accounts receivable from Fujitsu	\$ 175,609	\$ 187,898
Accounts payable to Fujitsu	43,456	32,345
Notes payable to Fujitsu	40,000	40,000

The royalty payable to Fujitsu represents the payments made by Spansion LLC to Fujitsu for its rights to Fujitsu's intellectual property. The commission to Fujitsu represents the compensation that Spansion LLC pays to Fujitsu for being a distributor of Spansion™ Flash

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memory products. The service fees to Fujitsu represent charges paid by Spansion LLC in exchange for services provided by Fujitsu, including information technology support, research and development, quality assurance, insurance, facilities, environmental and human resources services. These services are provided primarily to Spansion Japan Limited, Spansion LLC's wholly owned subsidiary (Spansion Japan).

In addition to the above transactions with Fujitsu, certain of Spansion Japan's employees are also covered by a defined pension plan and a lump-sum retirement benefit plan administered by Fujitsu, but for which the Company has assumed related pension liabilities. 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 nine-month period ended September 26, 2004, the Company recorded pension cost of approximately \$6 million and as of September 26, 2004, the Company has recorded a pension benefit obligation liability of approximately \$25 million. As of March 31, 2004, the date of the latest actuarial analysis of pension liability, the estimated projected benefit obligations under the plan related to Spansion Japan employees were approximately \$41 million and the estimated pension plan assets attributable to Spansion Japan employees were approximately \$14 million.

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

4. Financial Instruments

The following is a summary of the available-for-sale securities held by the Company as of September 26, 2004:

	Amortized Cost	Gross unrealized gains	Gross unrealized losses	Fair Market Value
(in thousands)				
Cash equivalents:				
Time deposits	\$452,518			\$452,518
Federal agency notes	19,257			19,257
Money market funds	111,000			111,000
Commercial papers	190,932			190,932
Total cash equivalents	\$773,707	—	—	\$773,707
Short-term investments:				
Auction rate preferred stocks	\$191,175			\$191,175
Corporate notes	2,879		(286)	2,593
Total short-term investments	\$194,054	—	(286)	\$193,768
Long-term investments:				
Equity investments	4,843	1,149	—	5,992
Total long-term investments (included in other assets)	\$ 4,843	\$ 1,149	—	\$ 5,992
Grand Total	\$972,604	\$ 1,149	\$ (286)	\$973,467

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

The amortized cost and estimated fair value of short-term investments at September 26, 2004, by contractual maturity, are shown below. Actual maturities may differ from contractual maturities because issuers may have the right to call or prepay obligations without penalties. The Company does not have any short-term investments with maturities greater than one year from September 26, 2004.

	Amortized Cost	Estimated Fair Value
	(in thousands)	
Due in one year or less	\$ 194,054	\$ 193,768
Total	\$ 194,054	\$ 193,768

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

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

The compensating balance of \$215 million at September 26, 2004 represents the minimum cash balance that AMD Saxony Limited Liability Company & Co. KG, an indirect wholly owned subsidiary of the Company, must maintain pursuant to the terms of the Dresden Loan Agreements (as defined in Note 8). As a result of the prepayment of the Dresden Term Loans on November 2, 2004, AMD Saxony will no longer be required to maintain a minimum cash balance. See Note 13.

5. Net Income (Loss) Per Common Share

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

	Quarter Ended		Nine Months Ended	
	September 26, 2004	September 28, 2003	September 26, 2004	September 28, 2003
	(in thousands, except per share data)			
Numerator:				
Numerator for basic income (loss) per common share	\$ 43,848	\$ (31,231)	\$ 121,119	\$ (317,683)
Effect of assumed conversion of \$402.5 million 4.50% convertible notes:				
Interest expense, net of tax provision	5,014	—	15,042	—
Profit sharing expense adjustment, net of tax provision	(501)	—	(1,504)	—
Numerator for diluted income (loss) per common share	\$ 48,361	\$ (31,231)	\$ 134,657	\$ (317,683)
Denominator:				
Denominator for basic income (loss) per share - weighted-average shares	355,254	347,334	353,412	346,222
Effect of dilutive securities:				
Employee stock options	7,709	—	10,506	—
4.50% convertible notes	54,613	—	54,613	—
Potential dilutive common shares	62,322	—	65,119	—
Denominator for diluted income (loss) per common share-adjusted weighted-average shares	417,576	347,334	418,531	346,222
Net income (loss) per common share:				
Basic	\$ 0.12	\$ (0.09)	\$ 0.34	\$ (0.92)
Diluted	\$ 0.12	\$ (0.09)	\$ 0.32	\$ (0.92)

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Potential dilutive common shares of approximately 21 million and 78 million for the three months ended September 26, 2004 and September 28, 2003 and 21 million and 77 million for the nine months ended September 26, 2004 and September 28, 2003 were not included in the net income (loss) per common share calculation, as their inclusion would have been antidilutive.

6. Segment Reporting

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

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

The All Other category is not a reportable segment. It includes small operating segments (personal connectivity solutions products, which include low power MIPS and x86 embedded

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microprocessor products, and Foundry Services, which included fees from its former voice communications and programmable logic products subsidiaries) that represent less than ten percent of the Company's consolidated net sales or assets, individually and in the aggregate. This category also includes certain operating expenses and credits that are not allocated to the Computation Products and Memory Products operating segments. Prior period segment information has been reclassified to conform to the current period presentation. However, because Spansion LLC did not exist prior to June 30, 2003, the Company's results of operations for periods prior to June 30, 2003 do not include the consolidation of Spansion LLC's results of operations. Accordingly, the segment operating information for the Memory Products segment for the nine months ended September 26, 2004 is not fully comparable to the reclassified segment information for the prior periods presented.

The following table is a summary of net sales and operating income (loss) by segment with reconciliations to net income (loss) for the quarters and nine months ended September 26, 2004 and September 28, 2003:

	Quarter Ended		Nine Months Ended	
	September 26, 2004	September 28, 2003	September 26, 2004	September 28, 2003
	(in thousands)		(in thousands)	
Computation Products				
Net sales	\$ 672,518	\$ 503,461	\$ 1,797,767	\$ 1,379,190
Operating income (loss)	89,479	19,290	214,266	(85,881)
Memory Products				
Net sales	537,608	423,815	1,838,585	852,707
Operating income (loss)	15,226	(49,455)	74,201	(186,826)
All Other				
Net sales	29,333	26,483	101,377	81,678
Operating income (loss)	(36,347)	(64)	(86,383)	(6,492)
Total				
Net sales	1,239,459	953,759	3,737,729	2,313,575
Operating income (loss)	68,358	(30,229)	202,084	(279,199)
Interest income and other, net	2,502	493	11,280	12,203
Interest expense	(25,148)	(26,848)	(83,259)	(79,017)
Minority interest in income of subsidiary	3,008	25,353	1,833	25,353
Provision for income taxes	(4,872)	—	(10,820)	(2,936)
Equity in net income of Manufacturing Joint Venture	—	—	—	5,913
Net income (loss)	\$ 43,848	\$ (31,231)	\$ 121,118	\$ (317,683)

7. Comprehensive Income (Loss)

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

	Quarter Ended		Nine Months Ended	
	September 26, 2004	September 28, 2003	September 26, 2004	September 28, 2003
	(in thousands)		(in thousands)	
Net income (loss)	\$ 43,848	\$ (31,231)	\$ 121,119	\$ (317,683)
Net change in cumulative translation adjustments	(281)	51,504	(24,108)	154,494
Net change in unrealized losses on cash flow hedges	(3,614)	(8,086)	(17,140)	(19,713)
Net change in minimum pension liabilities	—	(3,874)	—	(3,874)
Net change in unrealized gains/(losses) on available-for-sale securities	(1,739)	3,865	(5,418)	3,682
Other comprehensive (loss) income	(5,634)	43,409	(46,666)	134,589
Comprehensive income (loss)	\$ 38,214	\$ 12,178	\$ 74,453	\$ (183,094)

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8. Guarantees

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

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

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

	Amounts Guaranteed ⁽¹⁾	Amounts of Guarantee Expiration per Period					2009 and Beyond
		2004	2005	2006	2007	2008	
		(in thousands)					
Dresden inter-company guarantee ⁽²⁾	\$ 309,343	—	\$ 165,719	\$ 143,624	—	—	—
July 2003 Spansion term loan guarantee	30,885	4,126	16,500	10,259	—	—	—
Spansion Japan term loan guarantee	78,101	6,508	26,034	26,034	19,525	—	—
Spansion capital lease guarantees	104,273	12,721	45,066	43,215	3,271	—	—
Total guarantees ⁽³⁾	\$ 522,602	\$23,355	\$253,319	\$223,132	\$22,796	—	—

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

⁽²⁾ On November 2, 2004, the Company used the net proceeds from its offering of 7.75% Notes (as defined in Note 13), together with existing cash, to prepay the amount outstanding under the Dresden Term Loan plus accrued and unpaid interest. For more information, see Note 13.

⁽³⁾ The Company has not included in the table above its guarantees with respect to the obligations of AMD Fab 36 KG, AMD Fab 36 Holding and AMD Fab 36 Admin under the Fab 36 Loan Agreements and partnership agreements. As of September 26, 2004, no amounts were outstanding under the Fab 36 Loan Agreements and AMD Fab 36 KG had received \$74 million of silent partnership contributions and \$91 million of limited partnership contributions from its unaffiliated limited partners. Assuming milestones are met by AMD Fab 36 KG, the Company expects to receive a total \$172 million of silent partnership contributions and \$221 million of limited partnership contributions from the unaffiliated limited partners. With respect to each unaffiliated limited partner, AMD Fab 36 Holding and AMD Fab 36 Admin are obligated to repurchase such partner’s silent partnership contribution in annual installments commencing one year after the partner has contributed the full amount required under the partnership agreements. The Company guaranteed these repurchase obligations. However, as of September 26, 2004, the unaffiliated limited partners had not contributed the full amount required under the partnership agreements, and therefore, the condition precedent to the Company’s repurchase obligations had not been met. For more information, see Note 12.

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Dresden Term Loan Agreements and Dresden Inter-company Guarantee

AMD Saxony Limited Liability Company & Co. KG, (AMD Saxony) the Company's indirect wholly owned German subsidiary continues to facilitate Fab 30, which began production in the third quarter of 2000. AMD, the Federal Republic of Germany, the State of Saxony and a consortium of banks provided 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 Fab 30 project. AMD Saxony has pledged substantially all of its property as security under the Dresden Loan Agreements, the Company pledged its equity interests in its other wholly owned subsidiaries that are the limited partners and the general partner of AMD Saxony and these wholly owned subsidiaries pledged all of their partnership interests in AMD Saxony.

Because most of the amounts under the Dresden Loan Agreements are denominated in deutsche marks (converted to euros), the dollar amounts are subject to change based on applicable exchange rates. The Company used the exchange rate that was permanently fixed on January 1, 1999, of 1.95583 deutsche marks to one euro for the conversion of deutsche marks to euros, and then used exchange rate at September 26, 2004, of 0.815 euro to one U.S. dollar to translate the amounts denominated in euros into U.S. dollars. However, with respect to amounts for investment grants and allowances and interest subsidies received by AMD Saxony through September 26, 2004, the Company used historical exchange rates that were in effect at the time AMD Saxony received these grants, allowances and subsidies to convert amounts denominated in deutsche marks (converted to euros) into U.S. dollars.

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The Dresden Loan Agreements, as amended, provide for the funding of the construction and facilitization of Fab 30 and also require that the Company guarantee up to 50 percent of AMD Saxony's obligations under the Dresden Loan Agreements, which guarantee must not be less than \$137 million or more than \$368 million, until the bank loans are repaid in full. As of September 26, 2004, the amount guaranteed was \$309 million. On November 2, 2004, the Company used the net proceeds from its offering of 7.75% Notes, together with existing cash, to prepay the amount outstanding under the Dresden Term Loan plus accrued and unpaid interest. For more information, see Note 13.

July 2003 Spansion Term Loan Guarantee

Under the Company's 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 September 26, 2004. Repayment occurs in equal, consecutive, quarterly principal and interest installments ending in September 2006. As of September 26, 2004, \$51 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.

Spansion Japan Term Loan Guarantee

As a result of the Spansion LLC transaction, the third-party loans of Fujitsu AMD Semiconductor Limited, the previous manufacturing joint venture between AMD and Fujitsu, or 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 September 26, 2004. Repayment occurs in equal, consecutive, quarterly principal installments ending in June 2007. As of September 26, 2004, \$130 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 has agreed to reimburse Fujitsu 60 percent of any amount paid by Fujitsu under its guarantee of this loan.

Spansion Capital Lease Guarantees

The Company has guaranteed certain capital lease obligations of Spansion LLC and its subsidiaries totaling approximately \$104 million as of September 26, 2004. The amount of the guarantees will be reduced by the actual amount of lease payments paid by Spansion LLC over the lease terms.

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

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

(in thousands)	Amounts Guaranteed ⁽¹⁾	Amounts of Guarantee Expiration per Period					
		2004	2005	2006	2007	2008	2009 and Beyond
Spansion LLC operating lease guarantees	\$ 18,474	\$ 2,767	\$ 9,506	\$ 6,201	—	—	—
AMTC revolving loan guarantee	39,282	—	—	—	39,282	—	—
AMTC rental guarantee ⁽²⁾	117,888	—	—	—	—	—	117,888
Other	2,719	453	1,813	453	—	—	—
Total guarantees	\$ 178,363	\$ 3,220	\$ 11,319	\$ 6,654	\$ 39,282	—	\$ 117,888

⁽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.

Spansion LLC Operating Lease Guarantees

The Company has guaranteed certain operating leases entered into by Spansion LLC and its subsidiaries totaling approximately \$18 million as of September 26, 2004. The amount of the guarantees will be reduced by the actual amount of lease payments paid by Spansion LLC over the lease terms. No liability has been recognized for this guarantee under the provisions of FIN 45 because the guarantee is for a subsidiary's performance obligations.

Advanced Mask Technology Center and Maskhouse Building Administration Guarantees

The Advanced Mask Technology Center GmbH & Co. KG (AMTC) and Maskhouse Building Administration GmbH & Co., KG (BAC) are joint ventures formed by AMD, Infineon Technologies AG and DuPont Photomasks, Inc. for the purpose of constructing and operating a new advanced photomask facility in Dresden, Germany. To finance the project, BAC and AMTC entered into a \$147 million revolving credit facility and a \$92 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 September 26, 2004, the Company guaranteed up to approximately \$39 million plus interest and expenses under the revolving loan, and up to approximately \$17 million, initially, under the rental agreement. The obligations under the rental agreement guarantee diminish over time through 2011 as the term loan is repaid. However, under certain circumstances of default by the other tenant of the photomask facility under its rental agreement with BAC and certain circumstances of default by more than one joint venture partner under its rental agreement guarantee obligations, the maximum potential amount of

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the Company's obligations under the rental agreement guarantee is approximately \$118 million. As of September 26, 2004, \$72 million was drawn under the revolving credit facility, and \$73 million was drawn under the term loan.

Warranties and Indemnities

The Company offers a three-year limited warranty to end users for certain of its boxed microprocessor products and generally offers a one-year limited warranty only to direct purchasers for all other products. 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 liability for product warranty during the nine months ended September 26, 2004 and September 28, 2003 were as follows:

	Nine Months Ended	
	September 26, 2004	September 28, 2003
	(in thousands)	
Balance, beginning of period	\$ 24,668	\$ 19,369
New warranties issued during the period	32,168	28,437
Settlements during the period	(12,131)	(21,003)
Changes in liability for pre-existing warranties during the period, including expirations	(15,944)	(4,520)
Balance, end of period	\$ 28,761	\$ 22,283

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

9. Restructuring and Other Special Charges

2002 Restructuring Plan

In December 2002, the Company began implementing a restructuring plan (the 2002 Restructuring Plan) to further align its cost structure to the industry conditions at that time, including weak customer demand and industry-wide excess inventory. As a result of the 2002

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Restructuring Plan, as of September 26, 2004, 1,785 employees had been terminated pursuant to the 2002 Restructuring Plan resulting in cumulative cash payments of approximately \$60 million in severance and employee benefit costs.

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

The following table summarizes activities under the 2002 Restructuring Plan from December 28, 2003 through September 26, 2004:

	Severance and Employee Benefits	Exit and Equipment Decommission Costs	Total
		(in thousands)	
Accruals at December 28, 2003	\$ 6,740	\$ 120,623	\$ 127,363
Q1 2004 cash payments	(4,664)	(5,437)	(10,101)
Accruals at March 28, 2004	2,076	115,186	117,262
Q2 2004 cash payments	(1,481)	(5,224)	(6,705)
Q2 2004 non-cash adjustments	253	2,261	2,514
Accruals at June 27, 2004	848	112,223	113,071
Q3 2004 cash payments	(330)	(5,092)	(5,422)
Q3 2004 non-cash adjustments	(268)	—	(268)
Accruals at September 26, 2004	\$ 250	\$ 107,131	\$ 107,381

As of September 26, 2004 and December 28, 2003, \$89 million and \$99 million of the total restructuring accruals of \$107 million and \$128 million were included in Other Liabilities (long-term) on the consolidated balance sheets. (See Note 10.)

10. Other Long-Term Liabilities

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

	September 26, 2004	December 28, 2003
		(in thousands)
Dresden deferred grants and subsidies	\$ 213,040	\$ 262,941
Customer deposits	—	17,500
Deferred gain on sale leaseback of building	22,227	23,488
Restructuring accrual	88,746	98,590
Spancion LLC pension liability	24,613	26,242
Other	4,511	—
	\$ 353,137	\$ 428,761

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11. Spansion Japan Revolving Loan Agreement

In March 2004, Spansion Japan entered into a revolving credit facility agreement with certain Japanese financial institutions in the aggregate amount of 15 billion yen (approximately \$136 million as of September 26, 2004). The revolving facility consists of two tranches: tranche A, in the aggregate amount of up to nine billion yen (approximately \$81 million as of September 26, 2004), and tranche B, in the aggregate amount of up to six billion yen (approximately \$55 million as of September 26, 2004). Spansion Japan can draw under the facility until March 24, 2005. However, as described in more detail below, the total amount that Spansion Japan can draw is limited based on the value of Spansion Japan's accounts receivable from Fujitsu, which are pledged as security to the lenders. As of September 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 \$542 million as of September 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 September 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

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- 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 September 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 \$9 million as of September 26, 2004). As of September 26, 2004, the amount of accounts receivable held in the trust was approximately \$176 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 September 26, 2004 of 110.625 yen to one U.S. dollar to translate the amounts denominated in yen into U.S. dollars.

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

On April 21, 2004, AMD, AMD Fab 36 KG, AMD Fab 36 LLC, AMD Fab 36 Holding and AMD Fab 36 Admin (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. 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 in 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 \$859 million in loans to AMD Fab 36 KG upon its achievement of specified milestones, including attainment of "technical completion" at Fab 36, which requires certification by the banks' technical advisor that AMD Fab 36 KG has a wafer fabrication process suitable for high volume production of advanced microprocessors and has achieved specified levels of average wafer starts per week and average wafer yields, as well as cumulative capital expenditures of approximately \$1.2 billion. The Company currently anticipates that AMD

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Fab 36 KG will attain these milestones and first be able to draw on the loans in 2006. The amounts outstanding under the Fab 36 Loan Agreements are repayable in quarterly installments commencing 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 and 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. Also, AMD guaranteed the obligations of AMD Fab 36 KG to the lenders under the Fab 36 Loan Agreements. This guarantee also guarantees repayment of grants and allowances by AMD Fab 36 KG, should such repayment be required pursuant to the terms of the subsidies provided by the federal and 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 its 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:

<u>Amount (in thousands)</u>	<u>if Moody's Rating is at least</u>		<u>if Standard & Poor's Rating is at least</u>
\$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 September 26, 2004, group consolidated cash was greater than \$500 million, and therefore, the preceding financial covenants were not applicable.

Because most of the amounts under the Fab 36 Loan Agreements and the partnership agreements are denominated in euros, the dollar amounts are subject to change based on applicable exchange rates. The Company used the exchange rate at September 26, 2004, of 0.815 euro to one U.S. dollar, to translate the amounts denominated in euros into U.S. dollars. However, with respect to amounts for investment grants, allowances and subsidies received by Fab 36 through September 26, 2004, the Company used historical exchange rates that were in effect at the time Fab 36 received these grants, allowances and subsidies to convert amounts denominated in euros into U.S. dollars.

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The partnership agreements set forth each limited partner's aggregate capital contribution to AMD Fab 36 KG and the milestones for such contributions. Pursuant to the terms of the partnership agreements, the Company, through AMD Fab 36 Holding and AMD Fab 36 Admin, agreed to provide an aggregate of \$718 million. Leipziger Messe agreed to provide an aggregate of \$246 million and Fab 36 Beteiligungs agreed to provide an aggregate of \$147 million. The capital contributions of Leipziger Messe and Fab 36 Beteiligungs are comprised of limited partnership contributions and silent partnership contributions. The unaffiliated partners' contributions are due at various dates upon the achievement of milestones relating to the construction and operation of Fab 36.

The partnership agreements also specify that the unaffiliated partners receive a guaranteed rate of return of between 11 percent and 13 percent per annum of their total investment depending upon the monthly wafer output of Fab 36. 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 portion of the 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 \$4.3 million to Leipziger Messe and \$2.6 million to Fab 36 Beteiligungs. The right of first refusal price is the lower of the put option price or the price offered by the third party that triggered the right. The Company guaranteed the payments under the put options.

In addition, AMD Fab 36 Holding and AMD Fab 36 Admin are obligated to repurchase the silent partnership 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 \$98 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 \$74 million in annual 20 percent installments commencing one year after Fab 36 Beteiligungs has completed its limited partnership and silent partnership contributions.

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

The limited partnership capital 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 are subject to redemption outside of the control of AMD Fab 36 Holding and AMD Fab 36 Admin. Upon consolidation, the Company initially records these contributions as minority interest, based on their fair value. Each accounting period, the Company increases the ultimate redemption value of these contributions by the guaranteed rate of return of between 11 percent and 13 percent. The Company treats this increase as minority interest allocation. No separate accounting is required for the put and call options because they are not freestanding instruments and not considered derivatives under SFAS 133, Accounting for Derivative Instruments and Hedging Activities. However, in the event of exercise of the call option by the AMD Fab 36 Holding and AMD Fab 36 Admin, the call premium referenced above would be recorded as an additional minority interest allocation.

During the three months ended September 26, 2004, AMD Fab 36 KG received \$74 million of silent partnership contributions and \$91 million of limited partnership contributions. These contributions were recorded as long-term 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 consortium of banks referred above after the banks have foreclosed on all other security; and
- subsidies consisting of grants and allowances totaling up to approximately \$666 million.

As of September 26, 2004, AMD Fab 36 KG has received allowances of \$5 million for investments made in 2003.

Under the Fab 36 Loan Agreements, AMD Fab 36 KG and each of the affiliated limited partners are generally prevented from paying dividends or making other payments to the Company. In addition, the Fab 36 Loan Agreements also require that the Company:

- provide funding to AMD Fab 36 KG if cash shortfalls occur, including funding shortfalls in government subsidies resulting from any defaults caused by AMD Fab 36 KG or its affiliates; and

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

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

- 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 the Company or their ability to perform under the Fab 36 Loan Agreements;
- filings or proceedings in bankruptcy or insolvency with respect to the Company, AMD Fab 36 KG or any limited partner;
- occurrence of a change in control (as defined in the Fab 36 Loan Agreements) of the Company;
- AMD Fab 36 KG's noncompliance with certain affirmative and negative covenants, including restrictions on payment of profits, dividends or other distributions except in limited circumstances and restrictions on incurring additional indebtedness, disposing of assets and repaying subordinated debt; and
- AMD Fab 36 KG's noncompliance with certain financial covenants, including minimum tangible net worth, minimum interest cover ratio, loan to fixed asset value ratio and a minimum cash covenant.

In general, any default with respect to other indebtedness of AMD Fab 36 KG that results in recourse to AMD Fab 36 KG of more than \$6 million or any default with respect to indebtedness made or guaranteed by the Company that results in recourse to the Company of more than \$25 million, and that is not cured, would result in a cross-default under the Fab 36 Loan Agreements.

The occurrence of a default under the Fab 36 Loan Agreements would permit the lenders to accelerate the repayment of all amounts outstanding. In addition, the occurrence of a default under these agreements could result in a cross-default under the indentures governing the Company's 4.75% Debentures, 4.50% Notes and 7.75% Notes.

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13. Subsequent Events

Issuance of Senior Notes

On October 29, 2004, the Company sold \$600,000,000 of 7.75% Senior Notes due 2012 (the 7.75% Notes) pursuant to Rule 144A and Regulation S under the Securities Act of 1933, as amended. 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. 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 and its 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.

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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 period 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.

Issuance costs incurred in connection with this transaction in the amount of approximately \$12 million will be amortized ratably over the term of the 7.75% Notes as interest expense, approximating the effective interest method.

On November 2, 2004 the Company used the net proceeds from the offering of approximately \$587 million, together with existing cash, to prepay the amount outstanding under the Dresden Term Loan plus accrued and unpaid interest. The interest rate of the Dresden Term Loan was approximately 4.64 percent on a weighted-average basis. In connection with the pre-payment, the Company also expects to pay a prepayment premium, which will be recorded as other expense in the fourth quarter of 2004. Separately, as a result of this transaction, as of September 26, 2004, the Company classified approximately \$300 million of the Dresden Term Loan from current portion of long term debt to long term debt, and approximately \$32 million as current portion of long term debt in the Company's condensed consolidated balance sheet.

Section 3(a)(9) Exchange

On October 22, 2004, the Company exchanged \$70 million of its 4.50% Convertible Senior Notes due 2007 (the 4.50% Notes), plus accrued and unpaid interest, for 10,550,000 shares of its common stock. On November 3, 2004, the Company agreed to exchange \$60 million of its 4.50% Notes for 8,748,612 shares of its common stock that it expects to settle on November 8, 2004. These shares were issued in reliance upon an exemption from registration provided under Section 3(a)(9) of the Securities Act of 1933, as amended. As a result of these transactions, the Company expects to recognize an expense of approximately \$26 million during the fourth quarter of 2004 equal to the fair value of the shares issued in the transactions in excess of the fair value of shares issuable pursuant to the original conversion terms of the 4.50% Notes.

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

Cautionary Statement Regarding Forward-Looking Statements

The statements in this report include forward-looking statements. These forward-looking statements are based on current expectations and beliefs and involve numerous risks and uncertainties that could cause actual results to differ materially from expectations. These forward-looking statements should not be relied upon as predictions of future events as we cannot assure you that the events or circumstances reflected in these statements will be achieved or will occur. You can identify forward-looking statements by the use of forward-looking terminology, including "believes," "expects," "may," "will," "should," "seeks," "approximately," "intends," "plans," "pro forma," "estimates," or "anticipates" or the negative of these words and phrases or other variations of these words and phrases or comparable terminology. The forward-looking statements relate to, among other things, our sales, operating results and anticipated cash flows; the adequacy of resources to fund operations and capital expenditures; marketing, general and administrative expenditures; customer and market acceptance of our AMD Opteron™ and AMD Athlon™ 64 microprocessors, and the AMD64 technology upon which they are based; customer and market acceptance of our AMD Sempron™ microprocessors; customer and market acceptance of Spansion™ Flash memory products based on MirrorBit™ and floating gate technology; our ability to remain competitive and maintain our market position; our ability to maintain and develop key relationships with our customers; the ability to produce our microprocessor and Flash memory products in the volumes required by the market at acceptable yields and on a timely basis; our ability to maintain the level of investment in research and development and capacity that is required to remain competitive; our ability to transition to new products and manufacturing process technologies in a timely and effective way; our ability to achieve cost reductions in the amounts and in the timeframes anticipated; our ability to maintain or improve average selling prices of our products despite aggressive marketing and pricing strategies of our competitors; the process technology transitions in our wafer fabrication facilities; the financing and construction of our 300-millimeter wafer fabrication facility (Fab 36) in Dresden, Germany; and our ability to penetrate further into high-growth markets. 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 26 below and such other risks and uncertainties as set forth below in this report or detailed in our other Securities and Exchange Commission reports and filings.

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

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AMD, the AMD Arrow logo, AMD Athlon, AMD Opteron and AMD Sempron are trademarks of Advanced Micro Devices, Inc. Spansion and MirrorBit are trademarks of Spansion LLC. Microsoft, Windows, Windows NT and MS-DOS are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other jurisdictions. MIPS is a registered trademark of MIPS Technologies, Inc. in the United States and/or other jurisdictions. Other names are for informational purposes only and used to identify companies and products may be trademarks of their respective owners.

Overview

We design, manufacture and market industry-standard digital integrated circuits that are used in diverse product applications such as desktop and mobile personal computers, or PCs, workstations and servers, communications equipment such as mobile telephones, and automotive and consumer electronics. Our products consist primarily of microprocessors and Flash memory devices. We also sell low power, high performance x86 and MIPS[®] architecture-based embedded microprocessors for personal connectivity devices.

Total net sales for the third quarter of 2004 decreased two percent compared to the second quarter of 2004. This decrease in total net sales was primarily due to decreased demand for Flash memory products, which resulted in a decline in Memory Products net sales of 20 percent from the second quarter. Net sales for Memory Products decreased in large part due to decreased demand from the wireless handset market in Asia and to a lesser extent in Europe, in part due to channel inventory accumulation by wireless handset original equipment manufacturers, or OEMs, in China. The impact of the decline in total net sales was partially offset by an increase of 21 percent in net sales for Computation Products. Net sales for Computation Products increased as a result of increased sales of microprocessor products across all markets, with an increase in both average selling prices and unit shipments. Unit shipments of our AMD Athlon 64 microprocessors nearly doubled from the second quarter of 2004. In addition, in the third quarter of 2004, we began shipping AMD Athlon 64 processors manufactured using 90-nanometer process technology.

We believe critical success factors include: continuing to increase market acceptance of our AMD64 technology, particularly in the enterprise segment; 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 on a timely basis and increasing our share of those markets; expanding our participation in high-growth global markets, including China, Latin America, India and Eastern Europe; and improving our share of the Flash memory market, including increasing the adoption of MirrorBit technology.

We have two reportable segments:

- the Computation Products segment, which includes microprocessor products for desktop and mobile PCs, servers and workstations and chipset products; and

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- the Memory Products segment, which primarily includes Spansion Flash memory products.

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

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

Prior period segment information has been reclassified to conform to the current period presentation. However, because Spansion LLC did not exist prior to June 30, 2003, the results of our operations for periods prior to the third quarter of 2003 do not include the consolidation of Spansion LLC's results of operations. Accordingly, our operating results for nine months ended September 26, 2004 are not fully comparable with our results for nine months ended September 28, 2003 and the segment operating information for the Memory Products segment for nine months ended September 26, 2004 is not fully comparable to the reclassified segment information for nine months ended September 28, 2003.

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 period to period and quarter to quarter, 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 accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts in our consolidated financial statements. We evaluate our estimates on an on-going basis, including those related to our net sales, inventories, asset impairments, restructuring charges, income taxes and commitments and contingencies. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the

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carrying values of assets and liabilities. Although actual results have historically been reasonably consistent with management's expectations, the actual results may differ from these estimates or our estimates may be affected by different assumptions or conditions.

Management believes there have been no significant changes during the quarter ended September 26, 2004 to the items that we disclosed as our critical accounting policies and estimates in Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 28, 2003.

RESULTS OF OPERATIONS

We use a 52- to 53-week fiscal year ending on the last Sunday in December. The quarters and nine months ended September 26, 2004 and September 28, 2003 each included 13 weeks and 39 weeks.

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

	Quarter Ended			Nine Months Ended	
	September 26, 2004	June 27, 2004	September 28, 2003	September 26, 2004	September 28, 2003
	(in millions)				
Net sales					
Computation Products	\$ 672	\$ 554	\$ 503	\$ 1,797	\$ 1,379
Memory Products	538	673	424	1,839	853
All Other	29	35	27	101	82
Total	\$ 1,239	\$ 1,262	\$ 954	\$ 3,737	\$ 2,314
Operating income (loss)					
Computation Products	\$ 89	\$ 57	\$ 19	\$ 214	\$ (86)
Memory Products	15	45	(49)	74	(187)
All Other	(36)	(30)	—	(86)	(6)
Total	\$ 68	\$ 72	\$ (30)	\$ 202	\$ (279)

Computation Products

Computation Products net sales of \$672 million in the third quarter of 2004 increased 21 percent compared to net sales of \$554 million in the second quarter of 2004. The increase in net sales was driven primarily by increased microprocessor sales across all markets, with a 12 percent increase in average selling prices and a nine percent increase in unit shipments. Unit shipments of our AMD Athlon 64 microprocessors nearly doubled from the second quarter of 2004.

Computation Products net sales of \$672 million in the third quarter of 2004 increased 34 percent compared to net sales of \$503 million in the third quarter of 2003, primarily as a result of a 23 percent increase in average selling prices and a nine percent increase in unit

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shipments. Unit shipments increased due to improving market conditions across all geographic regions, especially North America and Asia. Average selling prices increased primarily as a result of increased sales of our higher-priced AMD Opteron and AMD Athlon 64 microprocessors, which we introduced in April 2003 and September 2003.

Computation Products net sales of \$1,797 million in the first nine months of 2004 increased 30 percent compared to \$1,379 million in the first nine months of 2003. Net sales increased primarily as a result of a 24 percent increase in average selling prices and a five percent increase in unit shipments. Average selling prices increased primarily as a result of sales of our higher-priced AMD Opteron and AMD Athlon 64 microprocessors. Unit shipments increased primarily as a result of improving market conditions across all geographic regions.

Computation Products operating income of \$89 million in the third quarter of 2004 improved \$32 million from operating income of \$57 million in the second quarter of 2004, primarily as a result of an increase in microprocessor sales across all markets, with a 12 percent increase in average selling prices and a nine percent increase in unit shipments.

Computation Products operating income in the third quarter of 2004 improved by \$70 million compared to operating income of \$19 million in the third quarter of 2003, primarily as a result of improving market conditions across all geographic regions, which contributed to the nine percent increase in unit shipments and 23 percent increase in average selling prices referenced above.

Computation Products operating income of \$214 million in the first nine months of 2004 improved from an operating loss of \$86 million in the first nine months of 2003. This improvement was primarily due to an increase in microprocessor sales. Net sales increased as a result of the 24 percent increase in average selling prices and the five percent increase in unit shipments referenced above.

Memory Products

Memory Products net sales of \$538 million in the third quarter of 2004 decreased 20 percent compared to net sales of \$673 million in the second quarter of 2004. The decrease in net sales was primarily attributable to a 14 percent decrease in unit shipments and seven percent decrease in average selling prices. In particular, net sales in Asia decreased 21 percent primarily due to a decrease in demand from the wireless handset market, in part due to channel inventory accumulation by wireless handset OEMs in China.

Memory Products net sales of \$538 million in the third quarter of 2004 increased 27 percent compared to net sales of \$424 million in the third quarter of 2003. The increase in net sales was primarily attributable to a 22 percent increase in average selling prices and a five percent increase in unit shipments of Spansion Flash memory products. Average selling prices and unit shipments increased from the third quarter of 2003 due to increased market demand, especially in Asia, where net sales increased 40 percent compared to third quarter of 2003.

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Memory Products net sales of \$1,839 million in the first nine months of 2004 increased 116 percent compared to net sales of \$853 million in the first nine months of 2003. This increase was primarily attributable to the effect of consolidating the operating results of Spansion LLC, effective June 30, 2003, which include Spansion LLC's sales to Fujitsu, as well as increased demand for Flash memory products. Further quantification of the breakdown in the sales increase is not practical due to the reorganization of customers and geographical sales territories between AMD and Fujitsu.

Memory Products operating income of \$15 million in the third quarter of 2004 decreased by \$30 million compared to operating income of \$45 million in the second quarter of 2004. The decrease in operating income was primarily due to a 20 percent decrease in Memory Products net sales. As stated above, Memory Products net sales decreased primarily as a result of decreased demand from the wireless handset market in Asia and to a lesser extent in Europe, in part due to channel inventory accumulation by wireless handset OEMs in China. The impact of this decrease was partially offset by a decline in manufacturing costs due to our transition to 110-nanometer process technology for certain of our Flash memory products as well as increased shipments of Flash memory products based on MirrorBit technology.

Memory Products operating income of \$15 million in the third quarter of 2004 improved by \$64 million from an operating loss of \$49 million in the third quarter of 2003. The improvement was primarily due to an increase in net sales of 27 percent, a decline in manufacturing costs due to our transition to smaller process technology, increased shipments of Flash memory products based on MirrorBit technology and benefits realized from the integration of our and Fujitsu's Flash memory operations.

Memory Products operating income of \$74 million in the first nine months of 2004 improved \$261 million from an operating loss of \$187 million in the first nine months of 2003. This improvement was primarily due to the effect of consolidating the operating results of Spansion LLC, which include Spansion LLC's sales to Fujitsu, as well as improving market demand for Flash memory products during the first two quarters of 2004. Further quantification of the improvement in operating results is not practical due to the consolidation of Spansion LLC's results of operations on June 30, 2003, which include sales to Fujitsu.

All Other Category

All Other net sales of \$29 million in the third quarter of 2004 decreased 15 percent compared to net sales of \$35 million in the second quarter of 2004 primarily due to a decrease in demand for certain of our embedded microprocessor and networking products.

All Other net sales of \$29 million in the third quarter of 2004 were relatively flat compared to net sales of \$27 million in the third quarter of 2003.

All Other net sales of \$101 million in the first nine months of 2004 increased 24 percent compared to \$82 million in the first nine months of 2003, primarily due to sales of certain new embedded microprocessor products.

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gross margin from the second quarter of 2004 was primarily due to increased net sales of our higher-margin AMD Athlon 64 and AMD Opteron microprocessor products and reduced manufacturing costs due to our transition to smaller process technology for Flash memory products, partially offset by a decrease in net sales of our Flash memory products. The improvement in gross margin from the third quarter of 2003 was primarily due to a richer product mix and improving market conditions, which resulted in higher average selling prices for both our microprocessor and Flash memory products. Gross margin of 39 percent in the first nine months of 2004 improved from 33 percent in the first nine months of 2003. The improvement was primarily due to a richer product mix, higher average selling prices for both our microprocessor and Flash memory products, cost reductions from the 2002 Restructuring Plan and other cost reduction initiatives. Further quantification of changes in the improvement in gross margin is not practical due to the consolidation of Spansion LLC's operating results, effective on June 30, 2003.

We amortize capital grants and allowances and interest subsidies that we receive from the State of Saxony and the Federal Republic of Germany for Fab 30 as they are earned. The amortization of these grants and subsidies is recognized as credits to cost of sales. The credits to cost of sales totaled \$17.5 million in the third quarter of 2004, \$17.0 million in the second quarter of 2004 and \$11.6 million in the third quarter of 2003. In the first nine months of 2004, such credits totaled \$48.0 million, and in the first nine months of 2003, such credits totaled \$33.6 million. The fluctuations in these credits have not significantly impacted our gross margins.

Research and development expenses of \$231 million in the third quarter of 2004 remained relatively flat compared to \$225 million in the second quarter of 2004 and increased eight percent compared to \$214 million in the third quarter of 2003. The increase from the third quarter of 2003 was primarily due to our increased research and development activities associated with newer versions of our microprocessor products. Research and development expenses of \$682 million in the first nine months of 2004 increased nine percent compared to \$626 million in the first nine months of 2003, primarily due to an increase in research and development expenses as a result of the formation of Spansion LLC, increased research and development activities related to newer versions of our AMD Opteron and AMD Athlon 64 microprocessors and increased research and development activities associated with our personal connectivity solutions products.

From time to time, we also apply for and obtain subsidies from the State of Saxony and the Federal Republic of Germany for certain research and development projects. We record the research and development subsidies as a reduction of research and development expenses when all conditions and requirements set forth in the subsidy grant are met. The credits to research and development expenses totaled \$8.7 million in the third quarter of 2004, \$4.2 million in the second quarter of 2004 and \$5.7 million in the third quarter of 2003. In the first nine months of 2004, credits totaled \$18.2 million, and in the first nine months of 2003, credits totaled \$15.8 million.

Marketing, general and administrative expenses of \$202 million in the third quarter of 2004 increased 13 percent compared with \$179 million in the second quarter of 2004. This

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increase was primarily due to corporate advertising and branding efforts, including for the AMD Athlon 64 and AMD Opteron brands, and the launch of our AMD Sempron microprocessor products. Marketing, general and administrative expenses of \$202 million in the third quarter of 2004 increased 34 percent compared to \$151 million in the third quarter of 2003. This increase was primarily due to marketing and branding efforts for our AMD Opteron and AMD Athlon 64 microprocessor products and the launch of our AMD Sempron microprocessor products in July 2004.

Marketing, general and administrative expenses of \$561 million in the first nine months of 2004 increased 32 percent compared to \$425 million in the first nine months of 2003. This increase was primarily due to an increase in expenses as a result of the formation of Spansion LLC and increased marketing and branding efforts for our AMD Opteron, AMD Athlon 64 and AMD Sempron microprocessor products.

Effects of Our 2002 Restructuring Plan

In December 2002, we began implementing the 2002 Restructuring Plan to further align our cost structure to the industry conditions at that time, including weak customer demand and industry-wide excess inventory. As a result of the 2002 Restructuring Plan, as of September 26, 2004, 1,785 employees had been terminated resulting in cumulative cash payments of approximately \$60 million in severance and employee benefit costs.

With the exception of the facility exit costs consisting primarily of remaining lease payments on abandoned facilities, net of estimated sublease income, which are payable through 2011, we have substantially completed the activities associated with the 2002 Restructuring Plan. As a result of the 2002 Restructuring Plan, we realized overall cumulative cost reductions of approximately \$283 million as of September 26, 2004.

The following table summarizes activities under the 2002 Restructuring Plan from December 28, 2003 through September 26, 2004:

	Severance and Employee Benefits	Exit and Equipment Decommission Costs	Total
		(in thousands)	
Accruals at December 28, 2003	\$ 6,740	\$ 120,623	\$ 127,363
Q1 2004 cash payments	(4,664)	(5,437)	(10,101)
Accruals at March 28, 2004	2,076	115,186	117,262
Q2 2004 cash payments	(1,481)	(5,224)	(6,705)
Q2 2004 non-cash adjustments	253	2,261	2,514
Accruals at June 27, 2004	848	112,223	113,071
Q3 2004 cash payments	(330)	(5,092)	(5,422)
Q3 2004 non-cash adjustments	(268)	—	(268)
Accruals at September 26, 2004	\$ 250	\$ 107,131	\$ 107,381

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Interest Income and Other, Net

Interest income and other, net, of approximately \$2.5 million in the third quarter of 2004 increased from a net expense of \$2 million in the second quarter of 2004 primarily because of a loss of approximately \$6 million during the second quarter of 2004 as a result of the mark-to-market of certain of our foreign currency forward contracts being used as economic hedges of forecasted capital contributions to AMD Fab 36 KG, which do not qualify as accounting hedges. Interest income and other, net, in the third quarter of 2004 increased from \$0.5 million in the third quarter of 2003 primarily due to a \$2 million charge in the third quarter of 2003 for other than temporary declines in our equity investments. Interest income and other, net, of \$11 million in the first nine months of 2004 decreased from \$12 million in the first nine months of 2003. While interest income in the first nine months of 2004 was relatively flat compared with the first nine months of 2003, the decrease was due to certain one-time other income and expenses items. Other income and expenses in the first nine months of 2004 included a gain of approximately \$7 million from sales of equity investments in the first quarter of 2004, offset by a loss of approximately \$6 million during the second quarter of 2004 as a result of the hedging loss referenced above. Other income and expenses in the first nine months of 2003 included a gain of approximately \$3.7 million from sale of available-for-sale securities, offset by a \$2 million charge in the third quarter of 2003 for other than temporary declines in our equity investments.

Interest expense of \$25 million in the third quarter of 2004 decreased from \$28 million in the second quarter of 2004 primarily because we capitalized an additional \$1.2 million of interest expense in connection with our Fab 36 project. Interest expense decreased from \$27 million in the third quarter of 2003 primarily because we capitalized approximately \$3 million of interest expense in connection with our Fab 36 project. Interest expense of \$83 million in the first nine months 2004 increased from \$79 million in the first nine months of 2003 primarily due to additional interest expense of approximately \$9 million from new debt assumed by Spansion LLC and its subsidiaries after the formation of Spansion LLC, as well as debt consolidated on our financial statements incurred by Fujitsu AMD Semiconductor Limited, the previous manufacturing joint venture between us and Fujitsu, or the Manufacturing Joint Venture, prior to the formation of Spansion LLC, partially offset by approximately \$4.5 million of interest expense relating to our Fab 36 project that we capitalized.

Income Taxes

We recorded an income tax provision of approximately \$5 million in the third quarter of 2004 and \$4 million in the second quarter of 2004. We recorded no income tax provision in the third quarter of 2003. The income tax provision recorded in the third and second quarters of 2004 was primarily for taxes due on income generated in certain foreign jurisdictions. The effective tax rates for the quarters ended September 26, 2004, June 27, 2004 and September 28, 2003 were ten percent, ten percent and zero percent. The effective tax rate for the nine months ended September 26, 2004 was approximately eight percent. The approximately \$3 million income tax provision for the nine months ended September 28, 2003 was primarily for taxes due on income generated in certain state and foreign tax jurisdictions.

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Other Items

International sales as a percent of net sales were 77 percent in the third quarter of 2004, 80 percent in the second quarter of 2004 and 81 percent in the third quarter of 2003. In the third quarter of 2003, sales to Latin America, constituting approximately two percent of total net sales, were originally reported as domestic sales and have been reclassified as international sales. During the third quarter of 2004, approximately 21 percent of our net sales were denominated in currencies other than the U.S. dollar, primarily the Japanese yen, as compared to 28 percent during the second quarter of 2004 and 21 percent during the third quarter of 2003. Sales denominated in foreign currencies consist primarily of sales by Spansion Japan to Fujitsu which are denominated in yen.

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 euros while sales of those products are denominated primarily in U.S. dollars;
- certain of our fixed asset purchases are denominated in euros and yen;
- sales of our Flash memory products in Japan are denominated in yen; and
- a significant amount of costs of our Fab 36 project is denominated in euros.

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. The impact on our operating results from changes in foreign currency rates individually and in the aggregate has not been material, principally as a result of our foreign currency hedging activities.

FINANCIAL CONDITION

Our cash, cash equivalents and short-term investments at September 26, 2004 totaled \$1.2 billion, which included approximately \$284 million in cash, cash equivalents and short-term investments held by Spansion LLC. Spansion LLC's operating agreement governs its ability to use this cash balance for operations or to distribute it to us and Fujitsu. Pursuant to the operating agreement, and subject to restrictions contained in third-party loan agreements, Spansion LLC must first distribute any cash balance to us and Fujitsu in an amount sufficient to cover each party's estimated tax liability, if any, related to Spansion LLC's taxable income for each fiscal year. Any remaining cash balance after the tax liability distribution would be used by Spansion LLC to fund its operations in accordance with its budget. If any cash remains, it must be used to repay Spansion LLC's outstanding debt to us and Fujitsu. Any remaining cash after these distributions is distributed at the discretion of Spansion LLC's board of managers to us and Fujitsu, pro rata, based on each party's membership interest at the time of distribution, which currently is 60 percent for AMD and 40 percent for Fujitsu. Our cash balance also included a compensating balance of \$215 million as of September 26, 2004, which represents the minimum cash balance that AMD Saxony must maintain pursuant to the terms of the Dresden Loan Agreements. As a result of the prepayment of the Dresden Term Loans on November 2, 2004, AMD Saxony will no longer be required to maintain a minimum cash balance. See "Other Financial Matters – Issuance of Senior Notes," below.

Net Cash Provided by (Used in) Operating Activities

Net cash provided by operating activities in the first nine months of 2004 was approximately \$724 million. Our net income for the period was adjusted for non-cash charges, which were primarily depreciation and amortization. The net changes in payables and accrued liabilities in the first nine months of 2004 included refunds of customer deposits of \$21 million under long-term purchase agreements and \$39 million in royalty payments by us under a cross-license agreement. Accounts receivable increased in the first nine months of 2004 by approximately \$236 million due to an increase of net sales of 62 percent in the first nine months of 2004 compared to net sales in the first nine months of 2003. In addition, inventories increased in the first nine months of 2004 by approximately \$112 million in anticipation of increased seasonal demand for our microprocessor and Flash memory products during the remainder of 2004. Substantially all of the increase in inventories was related to Flash memory products based on 110-nanometer technology and AMD64-based processor products.

Net cash used in operating activities was \$93 million in the first nine months of 2003. This was primarily caused by our year-to-date net loss of \$318 million and approximately \$436 million used for other operating activities due to net changes in operating assets and liabilities, described below, offset by non-cash charges, which included \$708 million of depreciation and amortization, non-cash credits of \$49 million from foreign grant and subsidy income, and \$20 million of net loss on disposal of property, plant and equipment. The net changes in operating assets and liabilities included a payment of \$90 million for a technology license from IBM, refunds of customer deposits of \$27 million under long-term purchase agreements and approximately \$35 million of severance payments under the 2002 Restructuring Plan.

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Net Cash Provided by (Used in) Investing Activities

Net cash used in investing activities was \$1,012 million in the first nine months of 2004. Cash was used primarily to purchase short-term investments and property, plant and equipment, including \$301 million for the continuing construction of our 300-millimeter wafer fabrication facility in Dresden, Germany.

Net cash provided by investing activities was \$291 million during the first nine months of 2003. This amount includes \$148 million from the acquisition of a controlling interest in Spansion LLC and \$530 million net cash from purchases and sales of available-for-sale securities, offset by \$408 million used for the purchases of property, plant and equipment.

Net Cash Provided by (Used in) Financing Activities

Net cash provided by financing activities was \$99 million in the first nine months of 2004, primarily from investments in AMD Fab 36 KG of \$74 million of silent partnership contributions and \$91 million of limited partnership contributions from the unaffiliated limited partners, amounts borrowed by our subsidiaries under short-term loans, proceeds from an equipment sale-leaseback transaction and sales of stock under our Employee Stock Purchase Plan and upon employee stock option exercises, partially offset by payments on debt and capital lease obligations.

Net cash provided by financing activities was \$366 million during the first nine months of 2003, primarily from \$245 million received from equipment sale-leaseback transactions, \$40 million borrowed by Spansion LLC from Fujitsu as part of Spansion LLC transaction, \$142 million of capital investment grants received from the German government for the Fab 30 project and \$17 million of proceeds primarily from sales of stock under our Employee Stock Purchase Plan and upon employee stock option exercises, offset by \$85 million in payments on debt and capital lease obligations.

Revolving Credit Facilities

We have entered into a revolving credit facility that expires in July 2007 and provides for a secured revolving line of credit of up to \$100 million (the July 2003 Loan Agreement). 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 September 26, 2004, no borrowings were outstanding under the July 2003 Loan Agreement.

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

- comply with restrictions on our ability to pay cash dividends on our common stock;

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- maintain an adjusted tangible net worth (as defined in the July 2003 Loan Agreement) as follows:

<u>Measurement Date</u>	<u>Amount</u>
	(in billions)
Last day of each fiscal quarter in 2004	\$ 1.425
Last day of each fiscal quarter in 2005	\$ 1.85
Last day of each fiscal quarter thereafter	\$ 2.0

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

<u>Period</u>	<u>Amount</u>
	(in millions)
Four fiscal quarters ending September 30, 2004	\$ 850
Four fiscal quarters ending December 31, 2004	\$ 950
Four fiscal quarters ending March 31, 2005 and on each fiscal quarter thereafter	\$ 1,050

As of September 26, 2004, net domestic cash, as defined, totaled \$333 million and the preceding financial covenants were not applicable. Our obligations under the July 2003 Loan Agreement are secured by all of our accounts receivable, inventory, general intangibles (excluding intellectual property) and the related proceeds, excluding Spansion LLC's accounts receivable, inventory and general intangibles.

Spansion Japan Revolving Loan Agreement

In March 2004, Spansion Japan Limited, a wholly owned subsidiary of Spansion LLC, entered into a revolving credit facility agreement with certain Japanese financial institutions in the aggregate amount of 15 billion yen (approximately \$136 million as of September 26, 2004). The revolving facility consists of two tranches: tranche A in the aggregate amount of up to nine billion yen (approximately \$81 million as of September 26, 2004) and tranche B in the aggregate amount of up to six billion yen (approximately \$54 million as of September 26, 2004). Spansion Japan can draw under the facility until March 24, 2005. However, as described in more detail below, the total amount that Spansion Japan can draw is limited based on the value of Spansion Japan's accounts receivable from Fujitsu, which are pledged as security to the lenders. As of September 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.

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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 \$542 million as of September 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 September 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 September 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, default by Fujitsu with respect to other third-party indebtedness where such debt exceeds one billion yen (approximately \$9 million as of September 26, 2004). As of September 26, 2004, the amount of accounts receivable held in the trust was approximately \$176 million.

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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 September 26, 2004 of 110.625 yen to one U.S. dollar to translate the amounts denominated in yen into U.S. dollars.

Contractual Cash Obligations and Guarantees

The following table summarizes our total principal contractual cash obligations at September 26, 2004, and is supplemented by the discussion following the table. Amounts set forth for operating leases and unconditional purchase commitments include only those amounts that are not recorded on our consolidated balance sheets.

	Payments Due By Fiscal Period						2009 and beyond
	Total	2004	2005	2006	2007	2008	
	(in thousands)						
4.75% Convertible Senior Debentures Due 2022	\$ 500,000	—	—	—	—	—	\$ 500,000
4.50% Convertible Senior Notes Due 2007 ⁽¹⁾	402,500	—	—	—	402,500	—	—
Dresden Term Loan ⁽²⁾	618,685	—	331,438	287,247	—	—	—
July 2003 Spansion Term Loan	51,474	6,875	27,500	17,099	—	—	—
Spansion Japan Term Loan	130,169	10,847	43,390	43,390	32,542	—	—
Fujitsu Cash Note	40,000	—	10,000	30,000	—	—	—
AMD Penang Term Loan	6,705	380	1,518	1,518	1,518	1,518	253
Spansion China Short-Term Loan	13,384	—	13,384	—	—	—	—
Capital lease obligations	206,413	26,307	96,397	79,368	4,124	217	—
Other long-term liabilities	—	—	—	—	—	—	—
Operating leases	390,056	17,956	62,885	51,535	39,832	37,586	180,262
Unconditional purchase commitments ⁽³⁾⁽⁴⁾	1,050,957	166,319	162,978	142,710	132,877	112,735	333,338
Total principal contractual cash obligations⁽⁵⁾⁽⁶⁾	\$ 3,410,343	\$ 228,684	\$ 749,490	\$ 652,867	\$ 613,393	\$ 152,056	\$ 1,013,853

⁽¹⁾ On October 22, 2004, we exchanged \$70 million of our 4.5% Notes, plus accrued and unpaid interest, for 10,550,000 shares of our common stock. On November 3, 2004, we agreed to exchange \$60 million of our 4.50% Notes for 8,748,612 shares of our common stock that we expect to settle on November 8, 2004. For more information, see “Other Financial Matters – Section 3(a)(9) Exchange.”

⁽²⁾ On November 2, 2004, we used the net proceeds from our offering of 7.75% Notes, together with existing cash, to prepay the amount outstanding under the Dresden Term Loan plus accrued and unpaid interest. For more information, see “Other Financial Matters – Issuance of Senior Notes.”

⁽³⁾ Purchase orders for goods and services that are cancelable upon notice and without significant penalties are not included in the amounts above.

⁽⁴⁾ 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.

⁽⁵⁾ We have not included in the table above the silent partnership contributions of the unaffiliated limited partners of AMD Fab 36 KG or our repurchase obligation with respect to such silent partnership contributions. As of September 26, 2004, AMD Fab 36 KG had received \$74 million of silent partnership contributions. These contributions were recorded as long-term debt in our consolidated balance sheets. Assuming milestones are met by AMD Fab 36 KG, we expect to receive a total of up to \$172 million of

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silent partnership contributions from the unaffiliated limited partners. With respect to each unaffiliated limited partner, AMD Fab 36 Holding and AMD Fab 36 Admin are obligated to repurchase such partner's silent partner contribution in annual installments one year after the partner has contributed the full amount required under the partnership agreements. As of September 26, 2004, the unaffiliated limited partners had not contributed the full amount required under the partnership agreements, and therefore, the condition precedent to our repurchase obligations had not been met. For more information, see "Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements."

- (6) On October 29, 2004, we sold \$600,000,000 of 7.75% Senior Notes. The 7.75% Notes mature on November 1, 2012. We have not included the contractual cash obligation for the 7.75% Notes in the table above because the transaction occurred after the end of the third quarter of 2004. For more information, see "Other Financial Matters-Issuance of Senior Notes."

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.

Beginning on 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%

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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.

4.50% Convertible Senior Notes Due 2007

On November 25, 2002, we sold \$402.5 million of 4.50% Convertible Senior Notes Due 2007 (the 4.50% Notes) in a registered offering. Interest on the 4.50% Notes is payable semiannually in arrears on June 1 and December 1 of each year, beginning June 1, 2003. Beginning on December 4, 2005, the 4.50% Notes are redeemable by us at our option for cash at specified prices expressed as a percentage of the outstanding principal amount plus accrued and unpaid interest provided that we may not redeem the 4.50% Notes unless the last reported sale price of our common stock is at least 150 percent of the then effective conversion price for at least 20 trading days within a period of 30 trading days ending within five trading days of the date of the redemption notice.

The redemption prices for the specified periods are as follows:

<u>Period</u>	<u>Price as a percentage of principal amount</u>
Beginning on December 4, 2005 through November 30, 2006	101.800%
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.

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

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On October 22, 2004, we exchanged \$70 million of our 4.50% Notes plus accrued and unpaid interest, for 10,550,000 shares of our common stock. On November 3, 2004, we agreed to exchange \$60 million of our 4.50% Notes for 8,748,612 shares of our common stock that we expect to settle on November 8, 2004. For more information, see “Other Financial Matters – Section 3(a)(9) Exchange.”

We may elect to purchase or otherwise retire our 4.50% Notes with cash, stock or other assets from time to time in open market or privately negotiated transactions, either directly or through intermediaries, 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.

Dresden Term Loan and Dresden Inter-company Guarantee

AMD Saxony, our indirect, wholly owned German subsidiary, continues to facilitate Fab 30, which began production in the second quarter of 2000. AMD, the Federal Republic of Germany, the State of Saxony and a consortium of banks provided financing for the project. We currently estimate that the construction and facilitization costs of Fab 30 will be \$2.5 billion when it is fully equipped by the end of 2005. As of September 26, 2004, we had invested approximately \$2.3 billion in AMD Saxony and we currently estimate that during the remainder of 2004 we will invest approximately \$70 million.

In March 1997, AMD Saxony entered into a loan agreement and other related agreements (the Dresden Loan Agreements) with a consortium of banks led by Dresdner Bank AG, a German financial institution, in order to finance the project. AMD Saxony has pledged substantially all of its property as security under the Dresden Loan Agreements, we pledged our equity interests in our other wholly owned subsidiaries that are the limited partners and the general partner of AMD Saxony and these wholly owned subsidiaries pledged all of their partnership interests in AMD Saxony.

Because most of the amounts under the Dresden Loan Agreements are denominated in deutsche marks (converted to euros), the dollar amounts are subject to change based on applicable exchange rates. We used the exchange rate that was permanently fixed on January 1, 1999, of 1.95583 deutsche marks to one euro, for the conversion of deutsche marks to euros, and then used the exchange rate at September 26, 2004, of 0.815 euro to one U.S. dollar, to translate the amounts denominated in deutsche marks into U.S. dollars. However, with respect to amounts for investment grants and allowances and interest subsidies received by AMD Saxony through September 26, 2004, we used historical exchange rates that were in effect at the time AMD Saxony received these grants, allowances and subsidies to convert amounts denominated in deutsche marks (converted to euros) into U.S. dollars.

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

- equity contributions, subordinated and revolving loans and loan guarantees from, and full cost reimbursement through, AMD;
- loans from a consortium of banks; and

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- investment grants, investment allowances, interest subsidies, and loan guarantees from the Federal Republic of Germany and the State of Saxony.

The Dresden Loan Agreements require that we partially fund Fab 30 project costs in the form of subordinated and revolving loans to, or equity investments in, AMD Saxony. In accordance with the terms of the Dresden Loan Agreements, as of September 26, 2004, we had provided \$178 million of subordinated loans and \$286 million of equity investments in AMD Saxony. These amounts have been eliminated in our unaudited condensed consolidated financial statements.

In addition to support from us, the consortium of banks referred to above made available \$941 million in loans to AMD Saxony to help fund Fab 30 project costs. The loans have been fully drawn. AMD Saxony had \$619 million of such loans outstanding as of September 26, 2004, which are included in our unaudited condensed consolidated balance sheet. On November 2, 2004, AMD Saxony prepaid the full amount outstanding under the Dresden Term Loans plus accrued and unpaid interest. See “Other Financial Matters – Issuance of Senior Notes,” below.

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

- guarantees equal to 65 percent of AMD Saxony bank debt, which was approximately \$402 million as of September 26, 2004;
- capital investment grants and allowances totaling up to approximately \$447 million as of September 26, 2004; and
- interest subsidies totaling \$188 million as of September 26, 2004.

Of these amounts, AMD Saxony received approximately \$411 million in capital investment grants and allowances and \$153 million in interest subsidies. AMD Saxony also received \$56 million in research and development subsidies through September 26, 2004. Amounts received under the Subsidy Agreement are recorded as a long-term liability on our financial statements and are being amortized to operations ratably over the contractual life of the Subsidy Agreement as a reduction to operating expenses. As of September 26, 2004, these amounts were amortized through December 2007. AMD Saxony has received substantially all investment grants and allowances and interest subsidies to which it is entitled.

Under the original Subsidy Agreement for the construction and financing of Fab 30, AMD Saxony undertook to attain a certain employee headcount by December 2003 and to maintain such headcount until December 2008. Noncompliance with the conditions of the grants, allowances and subsidies contained in the Subsidy Agreement could result in the forfeiture of all or a portion of the future amounts to be received, as well as the repayment of all or a portion of amounts received to date. In December 2002, AMD Saxony reduced its anticipated employment levels as a result of the 2002 Restructuring Plan. Consequently, as of December 2003, headcount was below the level agreed to by AMD Saxony at which AMD Saxony would be entitled to receive the maximum amount of capital investment grants and

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allowances available. However, the aggregate amount of grants and allowances actually received by AMD Saxony to date, calculated as a percentage of the maximum amount of grants and allowances available, does not exceed the actual headcount at AMD Saxony at December 2003, calculated as a percentage of the headcount target undertaken in the Subsidy Agreement. Accordingly, AMD Saxony does not believe it has received grants and allowances in excess of its entitlement under the Subsidy Agreement. However, we anticipate that the maximum amount of capital investment grants and allowances available under the Subsidy Agreement will be reduced from an originally anticipated amount of \$511 million to approximately \$447 million. We adjusted the quarterly amortization of these amounts accordingly.

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

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

- provide interim funding to AMD Saxony if either the remaining capital investment grants and allowances or the remaining interest subsidies are delayed, such funding to be repaid to AMD, as AMD Saxony receives the investment grants and allowances or subsidies from the State of Saxony and the Federal Republic of Germany;
- 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 \$137 million or more than \$368 million, until the bank loans are repaid in full.

As of September 26, 2004, the amount guaranteed was \$309 million. On November 2, 2004, AMD Saxony prepaid the full amount outstanding under the Dresden Term Loans plus accrued and unpaid interest. See "Other Financial Matters – Issuance of Senior Notes," below.

Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements

We are constructing a 300-millimeter wafer fabrication facility, Fab 36, in Dresden, Germany, 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. We expect that Fab 36 will produce future generations of our microprocessor products, and that it will be in volume production in

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2006. AMD, Leipziger Messe GmbH, a nominee of the State of Saxony, Fab 36 Beteiligungs GmbH, an investment consortium arranged by M+W Zander Facility Engineering GmbH, the general contractor for the project, and a consortium of banks are providing financing for the project. We also anticipate receiving up to approximately \$666 million in grants and allowances from federal and state German authorities for the project. We expect that capital expenditures for Fab 36 through 2007 will be approximately \$2.5 billion in the aggregate, of which approximately \$300 million will occur during the remainder of 2004.

The funding to construct and facilitate Fab 36 consists of:

- Contributions under the partnership agreements of up to approximately \$718 million and revolving loans of up to approximately \$920 million, a guarantee from, and full cost reimbursement through, AMD;
- investments of up to approximately \$393 million from the unaffiliated limited partners of AMD Fab 36 KG;
- loans of up to approximately \$859 million from a consortium of banks;
- up to approximately \$666 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 consortium of banks referenced above after the banks have foreclosed on all other security.

As of September 26, 2004 we had provided \$209 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 is established for an indefinite period of time. A partner may terminate its participation in the partnership by giving twelve months advance notice to the other partners. The termination becomes effective at the end of the year 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

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\$859 million in loans to AMD Fab 36 KG upon its achievement of specified milestones, including attainment of “technical completion” at Fab 36, which requires certification by the banks’ technical advisor that AMD Fab 36 KG has a wafer fabrication process suitable for high volume production of advanced microprocessors and has achieved specified levels of average wafer starts per week and average wafer yields, as well as cumulative capital expenditures of approximately \$1.2 billion. We currently anticipate that AMD Fab 36 KG will attain these milestones and first be able to draw on the loans in 2006. The amounts outstanding under the Fab 36 Loan Agreements are repayable in quarterly installments commencing 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. AMD guaranteed the obligations of AMD Fab 36 KG to the lenders under the Fab 36 Loan Agreements. This guarantee also guarantees repayment of grants and allowances by AMD Fab 36 KG, should such repayment be required pursuant to the terms of the subsidies provided by the federal and 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:

<u>Amount (in thousands)</u>	<u>if Moody's Rating is at least</u>		<u>if Standard & Poor's Rating is at least</u>
\$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 September 26, 2004, group consolidated cash was greater than \$500 million, and therefore, the preceding financial covenants were not applicable.

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Because most of the amounts under the Fab 36 Loan Agreements and the partnership agreements are denominated in euros, the U.S. dollar amounts are subject to change based on applicable exchange rates. We used the exchange rate at September 26, 2004, of 0.815 euro to one U.S. dollar, to translate the amounts denominated in euros into U.S. dollars. However, with respect to amounts for investment grants, allowances and subsidies received by Fab 36 through September 26, 2004, we used historical exchange rates that were in effect at the time Fab 36 received these grants, allowances and subsidies to convert amounts denominated in euros into U.S. dollars.

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 \$718 million, Leipziger Messe agreed to provide an aggregate of \$246 million and Fab 36 Beteiligungs agreed to provide an aggregate of \$147 million. The capital contributions of Leipziger Messe and Fab 36 Beteiligungs are comprised of limited partnership contributions and silent partnership contributions. The unaffiliated partners' contributions are due at various dates upon the achievement of milestones relating to the construction and operation of Fab 36.

The partnership agreements also specify that the unaffiliated partners receive a guaranteed rate of return of between 11 percent and 13 percent per annum of their total investment depending upon the monthly wafer output of Fab 36. We guaranteed these payments by AMD Fab 36 KG.

Pursuant to the terms of the partnership agreements and subject to the prior consent of the Federal Republic of Germany and the State of Saxony, AMD Fab 36 Holding and AMD Fab 36 Admin have a call option over the limited partnership 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 \$4.3 million to Leipziger Messe and \$2.6 million to Fab 36 Beteiligungs. The right of first refusal price is the lower of the put option price or the price offered by the third party that triggered the right. We guaranteed the payments under the put options.

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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 \$98 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 \$74 million in annual 20 percent installments commencing one year after Fab 36 Beteiligungs has completed its limited partnership and silent partnership contributions.

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

The 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 ultimate redemption value of these contributions by the guaranteed rate of return of between 11 percent and 13 percent. We treat this increase as minority interest allocation. No separate accounting is required for the put and call options because they are not freestanding instruments and not considered derivatives under SFAS 133, Accounting for Derivative Instruments and Hedging Activities. However, in the event of exercise of the call option by the AMD Fab 36 Holding and AMD Fab 36 Admin, the call premium referenced above would be recorded as an additional minority interest allocation.

During the three months ended September 26, 2004, AMD Fab 36 KG received \$74 million of silent partnership contributions and \$91 million of limited partnership contributions from the unaffiliated limited partners. These contributions were recorded as long-term 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 consortium of banks referenced above after the banks have foreclosed on all other security; and
- subsidies consisting of grants and allowances totaling up to approximately \$666 million.

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As of September 26, 2004, AMD Fab 36 KG has received allowances of \$5 million for investments made in 2003.

The Fab 36 Loan Agreements also require that we:

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

Under the Fab 36 Loan Agreements, AMD Fab 36 KG and each of the affiliated limited partners 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 Fab 36 KG that results in recourse to AMD Fab 36 KG of more than \$6 million or any default with respect to indebtedness made or guaranteed by AMD that results in recourse to us of more than \$25 million, and that is not cured, would result in a cross-default under the Fab 36 Loan Agreements.

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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 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.

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 September 26, 2004. Repayment occurs in equal, consecutive, quarterly principal and interest installments ending in September 2006. As of September 26, 2004, \$51 million was outstanding under the July 2003 Spansion Term Loan, of which 60 percent is guaranteed by us and 40 percent is guaranteed by Fujitsu. Spansion LLC granted a security interest in certain property, plant and equipment 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.

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

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In addition, during an enhanced covenant period, Spansion LLC is restricted in its ability to pay cash dividends in respect of membership interests.

As of September 26, 2004, Spansion LLC's net domestic cash balance was \$80 million and its net worldwide cash balance was \$284 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 Spansion LLC transaction, the third-party loans of the Manufacturing Joint Venture were refinanced from the proceeds of a term loan entered into between Spansion Japan, which owns the assets of the Manufacturing Joint Venture, and a Japanese financial institution. Under the agreement, the amounts borrowed bear an interest rate of TIBOR plus a spread that is determined by Fujitsu's current debt rating and Spansion Japan's non-consolidated net asset value as of the last day of its fiscal year. The interest rate was 0.98 percent as of September 26, 2004. Repayment occurs in equal, consecutive, quarterly principal installments ending in June 2007. As of September 26, 2004, \$130 million was outstanding under this term loan agreement. Spansion Japan's assets are pledged as security for its borrowings under this agreement. Also, Fujitsu has guaranteed 100 percent of the amounts outstanding under this facility. We agreed to reimburse Fujitsu 60 percent of any amount paid by Fujitsu under its guarantee of this loan. 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 \$542 million based on the exchange rate as of September 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	\$ 207
Fiscal year 2005	\$ 191
Fiscal year 2006	\$ 176

- 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%

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As of September 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 September 26, 2004 of 110.625 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 LLC transaction, Fujitsu loaned \$40 million to Spansion LLC pursuant to a promissory note. The note bears an interest rate of LIBOR plus four percent, which was 5.98 percent as of September 26, 2004, and has a term of three years. The note is repayable in four equal payments, including interest, on September 30, 2005, December 31, 2005, March 31, 2006 and June 30, 2006.

AMD Penang Term Loan

On January 29, 2004, our subsidiary in Malaysia, AMD Export Sdn. Bhd., or AMD Penang, entered into a term loan agreement with a local financial institution. Under the terms of the loan agreement, AMD Penang can borrow up to 30 million Malaysian Ringgit (approximately \$8 million as of September 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 September 26, 2004 was approximately \$7 million.

Spansion China Short-Term Loan

Spansion (China) Limited, Spansion LLC's subsidiary in the People's Republic of China, 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 September 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 September 26, 2004, the total amount outstanding under the U.S. dollar denominated loan was approximately \$5.5 million and the amount outstanding under the RMB denominated portion was approximately \$7.9 million.

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Capital Lease Obligations

As of September 26, 2004, we had aggregate outstanding capital lease obligations of approximately \$206 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 \$104 million of Spansion LLC's and its subsidiaries' aggregate outstanding capital lease obligations as of September 26, 2004.

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 \$89 million relating to the net future operating lease payments on certain facilities that were included in our 2002 Restructuring Plan. We will make these payments through 2011. We included these amounts in the operating lease total in the table above. The other components of Other Long-Term Liabilities primarily consist of approximately \$185 million of deferred subsidies related to the Fab 30 project, approximately \$28 million of deferred subsidies related to the Fab 36 project 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. These components do not require us to make cash payments.

Operating Leases

We lease certain of our facilities, including our executive offices in Sunnyvale, California, under lease agreements that expire at various dates through 2018. We lease certain of our manufacturing and office equipment for terms ranging from one to five years. Total future lease obligations as of September 26, 2004, were approximately \$390 million, of which \$113 million was recorded as a liability for certain facilities that were included in our 2002 Restructuring Plan.

Unconditional Purchase Commitments

We enter into purchase commitments for manufacturing supplies and services. Total non-cancelable purchase commitments as of September 26, 2004, were approximately \$1,051 million for periods through 2020. These purchase commitments included approximately \$169 million of payments to M+W Zander for the design and construction of Fab 36. These payments will be made to M+W Zander as services are performed. Our non-cancelable purchase commitments also included \$260 million representing future payments to IBM in connection with joint development projects 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. Purchase commitments also included approximately \$67 million for software maintenance agreements that require periodic payments through 2007. As a result, we have not recorded any liabilities relating to these agreements. The remaining \$565 million primarily consists of non-cancelable contractual obligations to purchase raw materials, natural resources and office supplies, including approximately \$444 million related to contractual obligations to purchase energy and gas for Fab 36 through 2020. Purchase orders for goods and services that are cancelable without significant penalties are not included in the amounts above.

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Guarantees of Indebtedness Recorded on Our Unaudited Condensed Consolidated Balance Sheet

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

	Amounts Guaranteed ⁽¹⁾	Amounts of Guarantee Expiration per Period					2009 and Beyond
		2004	2005	2006	2007	2008	
		(in thousands)					
Dresden inter-company guarantee ⁽²⁾	\$ 309,343	—	\$ 165,719	\$ 143,624	—	—	—
July 2003 Spansion term loan guarantee	30,885	4,126	16,500	10,259	—	—	—
Spansion Japan term loan guarantee	78,101	6,508	26,034	26,034	19,525	—	—
Spansion capital lease guarantees	104,273	12,721	45,066	43,215	3,271	—	—
Total guarantees ⁽³⁾	\$ 522,602	\$23,355	\$253,319	\$ 223,132	\$22,796	—	—

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

⁽²⁾ On November 2, 2004, we used the net proceeds from the offering of 7.75% Notes, together with existing cash, to prepay the amount outstanding under the Dresden Term Loan plus accrued and unpaid interest. For more information, see “Other Financial Matters-Issuance of Senior Notes.”

⁽³⁾ We have not included in the table above our guarantees with respect to the obligations of AMD Fab 36, AMD Fab 36 Holding or AMD Fab 36 Admin under the Fab 36 Loan Agreements and the partnership agreements. As of September 26, 2004, no amounts were outstanding under the Fab 36 Loan Agreements and AMD Fab 36 KG had received \$74 million of silent partnership contributions and \$91 million of limited partnership contributions from its unaffiliated limited partners. Assuming milestones are met, by AMD Fab 36 KG, the Company expects to receive a total \$172 million of silent partnership contributions and \$221 million of limited partnership contributions from the unaffiliated limited partners. With respect to each unaffiliated limited partner, AMD Fab 36 Holding and AMD Fab 36 Admin are obligated to repurchase such partner’s silent partnership contribution in annual installments commencing one year after the partner has contributed the full amount required under the partnership agreements. We guaranteed these repurchase obligations. However, as of September 26, 2004, the unaffiliated limited partners had not contributed the full amount required under the partnership agreements, and therefore, the condition precedent to our repurchase obligations had not been met. See “Fab 36 Term Loan and Guarantee and Fab 36 Partnership Agreements,” above.

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

The following table summarizes the principal guarantees issued as of September 26, 2004 for which the related underlying liabilities are not recorded on our unaudited condensed consolidated balance sheets as of September 26, 2004 and their expected expiration dates. We have not recorded any liability in our consolidated financial statements associated with the guarantees because they were issued prior to December 31, 2002, the effective date of FIN 45.

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Other Financial Matters

Issuance of Senior Notes

On October 29, 2004, we sold \$600,000,000 of 7.75% Senior Notes due 2012 (the 7.75% Notes) pursuant to Rule 144A and Regulation S under the Securities Act of 1933, as amended. 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 unpaid interest plus a “make-whole” premium. 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 LLC 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;

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- 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.

Issuance costs incurred in connection with this transaction in the amount of approximately \$12 million will be amortized ratably over the term of the 7.75% Notes as interest expense, approximating the effective interest method.

On November 2, 2004 we used the net proceeds from the offering of approximately \$587 million, together with existing cash, to prepay the full amount outstanding under the Dresden Term Loan plus accrued and unpaid interest. The interest rate on the Dresden Term Loan was approximately 4.64 percent on a weighted average basis. In connection with the prepayment, we also expect to pay a prepayment premium, which will be recorded as other expense in the fourth quarter of 2004. Separately, as a result of this transaction, as of September 26, 2004, we classified approximately \$300 million of the Dresden Term Loan from current portion of long term debt to long term debt and approximately \$32 million as current portion of long term debt in our condensed consolidated balance sheet.

Section 3(a)(9) Exchange

On October 22, 2004, we exchanged \$70 million of our 4.50% Convertible Senior Notes due 2007, plus accrued and unpaid interest, for 10,550,000 shares of our common stock. On November 3, 2004, we agreed to exchange \$60 million of our 4.50% Notes for 8,748,612 shares of our common stock that we expect to settle on November 8, 2004. These shares were issued in reliance upon an exemption from registration provided under Section 3(a)(9) of the Securities Act of 1933, as amended. As a result of these transactions, we expect to recognize an expense of approximately \$26 million during the fourth quarter of 2004 equal to the fair value of the shares issued in the transactions in excess of the fair value of the shares issuable pursuant to the original conversion terms of the 4.50% Notes.

We may elect to purchase or otherwise retire additional amounts 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.

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Spansion LLC

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

Short-Term and Long-Term Liquidity

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

Outlook

During the fourth quarter of 2004, we expect total net sales to increase, driven by increased net sales of our microprocessor products, which we expect will exceed seasonal trends. We expect net sales of our Flash memory products to be flat or increase slightly compared with the third quarter of 2004.

During the fourth quarter of 2004, we expect marketing, general and administrative expenses to increase compared with the third quarter of 2004 as we continue our advertising and branding efforts for our AMD64-based microprocessor products and our AMD Sempron microprocessors. In addition, we expect to make capital expenditures of approximately \$530 million in the fourth quarter.

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Supplementary Stock-Based Incentive Compensation Disclosures

Section I. Option Program Description

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

Section II. General Option and Award Information

The following is a summary of stock option and award activity for the nine months ended September 26, 2004 and fiscal year ended December 28, 2003:

	Nine Months Ended September 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/Awards:				
Outstanding at beginning of period	40,969	\$ 12.92	60,408	\$ 18.58
Granted	23,352 ⁽¹⁾	14.32	5,575	9.46
Canceled	(2,911)	24.03	(22,642)	27.69
Exercised	(4,122)	9.84	(2,372)	7.86
Outstanding at end of period	57,288	\$ 13.15	40,969	\$ 12.92
Exercisable at end of period	35,684	\$ 13.28	28,624	\$ 13.66
Available for grant at beginning of period	29,613		13,019	
Available for grant at end of period	25,675		29,613	

⁽¹⁾ Includes a restricted stock award of 40,000 shares granted to Derrick R. Meyer on May 12, 2004 at \$0.01 per share.

In-the-money and out-of-the-money stock option and award information as of September 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	18,871	\$ 8.67	7,946 ⁽²⁾	N/A ⁽³⁾	26,817	\$ 8.84
Out-of-the-Money ⁽¹⁾	16,813	\$ 18.46	13,658	N/A ⁽³⁾	30,471	\$ 16.93
Total Outstanding	35,684	\$ 13.28	21,604		57,288 ⁽⁴⁾	\$ 13.15

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- (1) Out-of-the-money stock options or awards have an exercise price equal to or above \$12.42, the closing price of our common stock, on September 24, 2004, the last trading day of the third quarter of 2004.
- (2) Includes a restricted stock award of 40,000 shares granted to Derrick R. Meyer on May 12, 2004 at \$0.01 per share. As of September 26, 2004, none of the shares subject to this award were vested.
- (3) Weighted average exercise price information is not available.
- (4) Includes 315,166 shares granted from treasury stock as non-plan grants.

Section III. Distribution and Dilutive Effect of Options and Awards

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

	YTD 2004	2003	2002
Net grants ⁽¹⁾ during the period as % of outstanding shares ⁽²⁾	5.74%	-4.87%	2.44%
Grants to listed officers ⁽³⁾ during the period as % of total options and awards granted	2.78%	11.77%	14.33%
Grants to listed officers during the period as % of outstanding shares	0.18%	0.19%	0.49%
Cumulative options and awards held by listed officers as % of total options and awards outstanding	16.73%	22.90%	17.93%

- (1) Options granted are net of options canceled.
- (2) Outstanding shares as of September 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 held in 2004, 2003 and 2002.

Section IV. Executive Options and Awards

Options and awards granted to listed officers for the nine months ended September 26, 2004 were as follows:

Name ⁽¹⁾	2004 Option and Award Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
	Number of Securities Underlying Options Per Grant	Percent of Total Options Granted to Employees as of Sept. 26, 2004	Exercise Price Per Share	Expiration Date	5%	10%
Hector de J. Ruiz	125,000	0.54%	\$ 14.64	2/2/2014	\$1,150,877	\$2,916,549
	75,000	0.32%	\$ 14.22	4/30/2011	\$ 434,173	\$ 1,011,807
	100,000	0.43%	\$ 11.33	7/28/2011	\$ 461,245	\$ 1,074,896
	75,000	0.32%	\$ 11.33	7/28/2011	\$ 345,933	\$ 806,172
W. J. Sanders III	—	0.00%	N/A	N/A	N/A	N/A
William T. Siegle	18,750	0.08%	\$ 14.64	2/2/2014	\$ 172,632	\$ 437,482
	6,250	0.03%	\$ 14.22	4/30/2011	\$ 36,181	\$ 84,317
	25,000	0.11%	\$ 14.22	4/30/2011	\$ 144,724	\$ 337,269
Derrick R. Meyer ⁽²⁾	37,500	0.16%	\$ 14.64	2/2/2014	\$ 345,263	\$ 874,965
	37,500	0.16%	\$ 14.22	4/30/2011	\$ 217,086	\$ 505,903
	37,500	0.16%	\$ 11.33	7/28/2011	\$ 172,967	\$ 403,086
Bertrand F. Cambou	37,500	0.16%	\$ 14.64	2/2/2014	\$ 345,263	\$ 874,965
	37,500	0.16%	\$ 14.22	4/30/2011	\$ 217,086	\$ 505,903
	37,500	0.16%	\$ 11.33	7/28/2011	\$ 172,967	\$ 403,086

- (1) The "listed officers" are those executive officers listed in the summary compensation table in our proxy statements for our annual meeting of stockholders held on April 29, 2004.
- (2) Does not include a restricted stock award of 40,000 shares granted to Mr. Meyer under our 2004 Plan on May 12, 2004 at a purchase price of \$0.01 per share.

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Option exercises during the nine months ended September 26, 2004 and option values for listed officers for this period were as follows:

Name ⁽¹⁾	Shares Acquired on Exercise	Value Realized ⁽²⁾	Number of Securities Underlying Unexercised Options at September 26, 2004		Values of Unexercised In-the-Money Options at September 26, 2004	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Hector de J. Ruiz	—	\$ —	2,472,241	1,977,759	\$ 578,920	\$ 1,286,830
W.J. Sanders III	400,000	\$ 994,089	3,400,000	—	\$ 11,198,000	—
William T. Siegle	12,000	\$ 202,520	609,751	87,499	\$ 1,081,826	\$ 173,768
Derrick R. Meyer ⁽³⁾	—	\$ —	451,316	209,634	\$ 734,871	\$ 406,784
Bertrand F. Cambou	—	\$ —	171,670	203,330	\$ 173,670	\$ 259,830

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

⁽²⁾ Value for these purposes is based solely on the difference between market value of underlying shares on the applicable date (i.e., date of exercise or nine-months ended September 26, 2004) and exercise price of options.

⁽³⁾ Does not include a restricted stock award of 40,000 shares granted to Mr. Meyer under our 2004 Plan on May 12, 2004 at a purchase price of \$0.01 per share.

Section V. Equity Compensation Plan Information

The number of shares issuable upon exercise of outstanding options granted to employees and non-employee directors, as well as the number of shares remaining available for future issuance under our 2004 Plan as of September 26, 2004, are summarized in the following table:

Plan category	Nine Months Ended September 26, 2004		
	Number of Securities to be Issued Upon Exercise of Outstanding Options (a)	Weighted-Average Exercise Price of Outstanding Options (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)
Equity compensation plans approved by stockholders	33,203,009 ⁽¹⁾	\$ 14.23	25,675,034
Equity compensation plans not approved by stockholders	24,045,864 ⁽²⁾	\$ 11.65	—
TOTAL	57,248,873		25,675,034

⁽¹⁾ Does not include a restricted stock award of 40,000 shares granted to Derrick R. Meyer under our 2004 Plan on May 12, 2004 at a purchase price of \$0.01 per share.

⁽²⁾ Includes 315,166 shares granted from treasury stock as non-plan grants.

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Risk Factors

If we cannot generate sufficient operating cash flow and obtain external financing, we may be unable to make all of our planned capital expenditures or fulfill our obligations to Fab 36 or Spansion LLC. 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. For example, our planned capital expenditures of \$1.5 billion for 2004 include approximately \$600 million for the Fab 36 project, approximately \$600 million for increasing the manufacturing capacity of our Flash memory fabrication and assembly and test facilities and for other Flash memory-related research and development activities and approximately \$200 million for Fab 30. As of September 26, 2004, we had spent approximately \$970 million of our total projected fiscal 2004 capital expenditures.

Under the partnership agreements for AMD Fab 36 KG, our German subsidiaries, AMD Fab 36 Holding and AMD Fab 36 Admin, are obligated to invest approximately \$718 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 \$921 million 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.

In addition, we are also obligated through June 30, 2007 to provide Spansion LLC with additional funding to finance operational cash flow needs. Generally, Spansion LLC must seek any required financing from external sources. However, if such 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 LLC equal to our pro rata ownership interest in Spansion LLC, which is currently 60%. An inability to meet our funding obligations for Spansion LLC could, among other things, result in additional equity in Spansion LLC being issued to Fujitsu or third parties, which would reduce our ownership in and control over Spansion LLC.

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Our capital expenditures, together with ongoing operating expenses, will be a substantial drain on our cash flow and will decrease our cash balances. The timing and amount of our capital requirements cannot be precisely determined at this time and will depend on a number of factors, including demand for products, product mix, changes in semiconductor industry conditions and 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. We have a substantial amount of indebtedness. As of September 26, 2004, we had consolidated debt of approximately \$2,043 million. In addition, we guaranteed approximately \$178 million of obligations that are not reflected on our balance sheet. On October 22, 2004 we repurchased \$70 million of our 4.50% Notes plus accrued and unpaid interest in exchange for 10,550,000 shares of our common stock. On October 29, 2004 we issued and sold \$600 million principal amount of 7.75% Senior Notes due 2012. On November 2, 2004, we used the net proceeds from this offering of approximately \$587 million, along with existing cash, to prepay the full amount outstanding under the Dresden Term Loans plus accrued and unpaid interest. Accordingly, as of September 26, 2004, after giving effect to the partial repurchase of our 4.50% Notes, the issuance of the 7.75% Notes and the application of the net proceeds therefrom, we would have had consolidated debt of approximately \$1,954 million. Our substantial indebtedness may:

- make it difficult for us to satisfy our financial obligations, including making scheduled principal and interest payments on our indebtedness;
- 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;
- 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.

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We and our subsidiaries may 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 September 26, 2004, we and our subsidiaries would have had the following additional borrowings available:

- We currently have available up to \$100 million under our July 2003 Loan Agreement. 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 LLC's accounts receivable, inventory and general intangibles.
- Spansion Japan had up to 15 billion yen (approximately \$136 million as of September 26, 2004) available under the Spansion Japan Revolving Loan Agreement.
- AMD Fab 36 KG will have the ability, subject to achieving certain technological milestones, to borrow up to \$859 million from a consortium of banks under the Fab 36 Loan Agreements during 2006 and 2007.

Although the terms of these facilities, and the indenture governing the 7.75% Notes 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 under our credit facilities 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. We are restricted by several of our debt instruments. The indenture governing the 7.75% Notes contains 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, which include Spansion LLC and its 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

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- 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 limited partners to pay us dividends and other payments, and require us to maintain specified financial ratios when group consolidated cash is below specified amounts.
- Our July 2003 Loan Agreement 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 LLC's ability to pay dividends and also requires Spansion LLC 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, those 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 note holders to declare all amounts outstanding under those borrowing arrangements to be immediately due and payable and would permit the lenders to terminate all commitments to extend further credit. If we were unable to repay those amounts, the lenders could proceed against the collateral granted to them to secure that indebtedness. We have granted a security interest in substantially all of our inventory and accounts receivable under our July 2003 Loan Agreement, and in certain property, plant and equipment under the July 2003 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 or 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

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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 the AMD64 technology that we introduced with our AMD Opteron and AMD Athlon 64 processors, independent software providers may forego designing their software applications to take advantage of our innovations and customers may not purchase personal computers, or 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 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 Opteron and AMD Athlon 64 processors.

We must achieve further market acceptance of our 64-bit technology, AMD64, or we will be materially adversely affected. We designed our AMD Opteron and AMD Athlon 64 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 new process technologies, including 90-nanometer silicon-on-insulator technology, in the volume and with the performance and feature set required by customers; and
- the availability, performance and feature set of motherboards, 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

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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, from the beginning of 2002 through September 26, 2004, we paid approximately \$228 million to IBM in connection with agreements and services related to license grants and research and development activities.

In addition, we have a joint development agreement with IBM, pursuant to which we work together to develop new process technologies. 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 with IBM are critical to our AMD Opteron and AMD Athlon 64 microprocessors and to our ability to commence operations at Fab 36 in accordance with our planned schedule. In September 2004, we amended our joint development agreement with IBM and extended its termination date from December 2005 to December 2008. The continuation of the process development projects past December 31, 2005 is conditioned upon the approval of IBM's board of directors. If such approval is not received, either party has the right to terminate the agreement effective December 31, 2005 with respect to process development projects past December 31, 2005. If the agreement were to be terminated, we would either have to resume research and development activities for microprocessor technology 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.

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

Fluctuations in demand for PCs and mobile telephones may adversely affect sales of our products. The Computation Products segment of our business is dependent upon the market

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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 the market for mobile telephones. If demand for mobile telephones is below our expectations or if the functionality of successive generations of mobile telephones does not require increasing NOR Flash memory density, 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 microprocessor products, our principal 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.

The Flash memory market is characterized by migration to ever-higher performance devices and a competitive pricing environment. 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. In addition, we face competition from microcontroller vendors such as Freescale and Renesas who integrate low density Flash memory on the same die with their microcontrollers. To compete successfully, we must transition to technologies that meet the increasing demand for higher Flash memory content in mobile phones and automotive applications, among other markets. 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 and competitors aggressively price their Flash memory products to increase market share. In addition, we and certain of our competitors have licensed certain non volatile memory technology from a third party, which allows memory devices to store two bits of data in a memory cell. This technology has similar characteristics to our MirrorBit technology, which may allow these competitors to develop Flash memory technology that is competitive with MirrorBit technology. If we fail to achieve yield and volume goals for our higher-density/performance Flash memory products, we could be materially adversely affected.

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

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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. For example, Intel exerts substantial influence over PC manufacturers and their channels of distribution through the "Intel Inside" brand program and other marketing programs. As long as Intel remains in this dominant position, we may be materially adversely affected by 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
- user brand loyalty.

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 original equipment manufacturers, or OEMs, are highly dependent on Intel, less innovative on their own and, to a large extent, are distributors of Intel technology. Additionally, Intel is able to drive de facto standards for x86 microprocessors that could cause us and other third-party companies to have delayed access to such standards. In marketing our microprocessors to OEMs, we depend on third-party companies other than Intel for the design and manufacture of core-logic chipsets, graphics chips, motherboards, BIOS software and other components. In recent years, many of these third-party designers and manufacturers have lost significant market share to Intel or exited the business. In addition, these companies produce chipsets, motherboards, BIOS software and other components to support each new generation of Intel's microprocessors, and Intel has significant leverage over their business opportunities.

We do not currently plan to develop microprocessors that are bus interface protocol compatible with Intel microprocessors because our patent-cross license agreement with Intel does not extend to 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 producers of motherboards, chipsets and other system components support our microprocessor offerings, particularly AMD64-based microprocessors. A failure of the designers and producers of motherboards, chipsets and other system components to support our microprocessor offerings, particularly our AMD64-based microprocessors, could have a material adverse effect on us.

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We expect Intel to maintain its dominant position in the microprocessor market, to continue to be a significant competitor in the Flash memory market and to continue to invest heavily in research and development, new manufacturing facilities and other technology companies. Intel has substantially greater financial resources than we do and accordingly spends substantially greater amounts on research and development and production capacity than we do. We expect competition from Intel to increase to the extent Intel reduces prices on its microprocessor and/or Flash memory products and introduces new competitive products. For example, during June 2004 Intel announced the availability of a 64-bit processor for servers and workstations that runs existing 32-bit software applications. These processors compete with our AMD Opteron microprocessors. In addition, Intel announced that it will offer 64-bit processors for the desktop market and other market segments that will be able to run existing 32-bit software applications in a time frame based on both timing and availability of the infrastructure required to support them, and customer demand. These products would compete with our AMD Athlon 64 microprocessors. Moreover, Intel currently manufactures certain of its microprocessor products on 300-millimeter wafers using 90-nanometer process technology. Use of 90-nanometer technology can result in products that are higher performing, use less power and cost less to manufacture. Use of 300-millimeter wafers can decrease manufacturing costs and increase capacity by yielding more chips per wafer than 200-millimeter wafers. We are currently transitioning to 90-nanometer process technology for microprocessor manufacturing and we expect to transition to 300-millimeter wafers in 2006. As a result, 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 for our microprocessor products or the loss of a significant customer for our Spansion Flash memory products in the high-end mobile telephone market, may have a material adverse effect on us. Collectively, our top ten OEM microprocessor customers accounted for approximately 19 percent of our total net revenues in 2003. Similarly, our Flash memory product sales growth is dependent on demand for high-end mobile telephones. To date, our sales in that market have been concentrated with 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.

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 key factor impacting our ability to increase Flash memory product revenues. 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

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products, including those based on MirrorBit technology, to any future process technology could reduce our ability to be competitive in the market. In addition, we intend to position ourselves to address end markets traditionally served by NAND Flash memory with our second-generation MirrorBit technology. If our second-generation MirrorBit technology fails to achieve acceptance in markets traditionally served by NAND architecture, or at all, we could be materially adversely affected.

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

We are required to reach agreement with Fujitsu regarding certain actions of our majority-owned subsidiary, Spansion LLC, and our interests may not be aligned. We own 60 percent of the equity interest in Spansion LLC 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 LLC, certain actions by Spansion LLC require Fujitsu's consent for as long as Fujitsu maintains specific levels of equity ownership in Spansion LLC. In addition, based upon designated thresholds of Fujitsu's percentage interest in Spansion LLC, certain actions require the affirmative vote of at least a majority of the managers appointed by Fujitsu. These actions include:

- major investments, acquisitions and dispositions of assets;
- 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 LLC;
- changes to the equity capital structure of the Spansion LLC; and
- winding-up Spansion LLC 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 LLC's board of managers, which could result in the loss of effective control of Spansion LLC, although the results of operations of Spansion LLC may continue to impact significantly our results of operations and we still may be required to make loans to, and guarantee indebtedness of, Spansion LLC.

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

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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.

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 continued to improve 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. However, if Chinese authorities are not able to stage an orderly slowdown, or "soft landing," China's economy could be materially adversely affected. A decline in economic conditions in China could lead to declining worldwide economic conditions. If economic conditions decline, whether in China or worldwide, we could be materially adversely affected.

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

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

More generally, any of these events could cause consumer confidence and spending to decrease or result in increased volatility to the United States economy and worldwide financial markets. Any of these occurrences could have a material adverse effect on us and also may result in 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 euros while sales of those products are denominated primarily in U.S. dollars;

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- certain of our fixed asset purchases are denominated in euros and yen;
- sales of our Flash memory products in Japan are denominated in yen; and
- a significant amount of the costs of our Fab 36 project is denominated in euros.

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. For example, the U.S. dollar-denominated cost of construction of Fab 36 has increased from our initial projections as a result of the recent depreciation of the U.S. dollar against the euro. Whenever we believe appropriate, we hedge a portion of our foreign currency exchange exposure to protect against fluctuations in currency exchange rates. As of September 26, 2004 we had an aggregate of \$503 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.

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. If we do not complete the transition to 90-nanometer manufacturing process technology at Fab 30 on a timely basis, we may not be able to meet the demand for certain of our microprocessor products. In addition, if we do not complete the transition to manufacturing certain Flash memory products using 110-nanometer and more advanced manufacturing process technology on a timely basis, or otherwise increase capacity at our Flash memory manufacturing facilities, we may not be able to meet demand for these products from our customers. If we cannot meet demand for our products we could be materially adversely affected.

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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 building 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 these 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 transitioning the production of our microprocessor products to 90-nanometer process technology and the production of certain Flash memory products to 110-nanometer process technology. In addition, we anticipate that Flash memory products will be produced on 90-nanometer process technology in 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.

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If essential materials are not available to manufacture our products, we could be materially adversely affected. Certain raw materials we use in the manufacture of our products are available from a limited number of suppliers. For example, we are dependent on key chemicals from a limited number of suppliers and 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, from third-party suppliers and incorporate these die into Spansion multi-chip package products. Interruption of supply or increased demand in the industry could cause shortages and price increases in various essential materials. If we are unable to procure certain of these materials, we may have to reduce our manufacturing operations. Such a reduction could have a material adverse effect on us.

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.

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

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In addition, we decided to 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 2003, two distributors, Avnet, Inc. and Fujitsu, each accounted for approximately 13 percent of our consolidated net sales. 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 effected.

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 our products. Under certain agreements, distributors are allowed to return 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 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. Our international sales as a percentage of our total consolidated net sales were 77 percent in the third quarter of 2004, 80 percent in the second

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quarter of 2004 and 81 percent in the third quarter of 2003. Nearly all product assembly and final testing of our products are performed at our manufacturing facilities in China, Malaysia, Singapore and Thailand. We manufacture our microprocessors in Germany. We also depend on foreign foundry suppliers for the production of our chipsets and our embedded microprocessors for personal connectivity devices and depend on international joint ventures for the manufacture of optical photomasks that we intend to use in the manufacture of our microprocessors. In addition, we have international sales operations and as part of our business strategy, we are continuing to seek expansion of product sales in emerging markets.

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 risks, should they occur, could have a material adverse effect on us.

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 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

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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. Our operations are subject to various U.S. and foreign environmental statutes and regulations, including those relating to materials used in our products and manufacturing processes, discharge of pollutants into the air, water and soil, treatment, transport, storage and disposal of solid and hazardous wastes, and remediation of soil and groundwater contamination. From time to time, our facilities are subject to investigation by governmental regulators. We have in the past been named and may in the future be named as a responsible party or a potentially responsible party on Superfund clean-up orders and other environmental investigations sponsored by the Environmental Protection Agency, or EPA. We cannot be certain that we have identified all environmental matters giving rise to potential liability. 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 past misuse of hazardous materials, new releases or newly discovered contaminations at any of our currently or formerly owned or operated properties could result in increased expenditures or liabilities which could materially adversely affect us.

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

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

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

ITEM 4. CONTROLS AND PROCEDURES

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

As of September 26, 2004, the end of the quarter covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

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

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PART II. OTHER INFORMATION

ITEM 6. EXHIBITS

(a) Exhibits

- 4.6 Indenture, dated as of 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 as of 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.
- *10.14 Vice President Performance Recognition Program.
- *10.18 Form of Management Continuity Agreement.
- ***10.36(b) Letter Agreement, effective as of September 13, 2004, between Advanced Micro Devices, Inc. and International Business Machines Corp.
- 10.39(a-3) 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.
- 10.41(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.
- ***10.47 Amended and Restated "S" Process Development Agreement, effective as of December 28, 2002, between Advanced Micro Devices, Inc. and International Business Machines Corp.
- 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.

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32.1 Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2 Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Management contracts and compensatory plans or arrangements.

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

SIGNATURES

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

Date: November 4, 2004

ADVANCED MICRO DEVICES, INC.

By: /s/ ROBERT J. RIVET

Robert J. Rivet
Executive Vice President,
Chief Financial Officer

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

**VICE PRESIDENT
PERFORMANCE
RECOGNITION PROGRAM**

Personal and Confidential



I. Purpose

The Vice President Incentive Program (VPIP) recognizes and rewards AMD’s and FASL LLC’s Vice Presidents (Participants) for furthering AMD’s and FASL 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)	<ul style="list-style-type: none"> • Corporate Operating Profit vs. Plan • Group Operating Profit vs. Plan • Performance against Balanced Scorecard
	Group Performance Award (GPA)	
	Individual Performance Award (IPA)	
LTP	Relative Profitability	<ul style="list-style-type: none"> • AMD Return on Equity (ROE) vs. S&P 500 Return on Equity (ROE) over 3 years • AMD Sales Growth vs. WSTS Sales Growth over 3 years
	Relative Sales Growth	

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.

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- 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)	\$ 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)	\$ 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

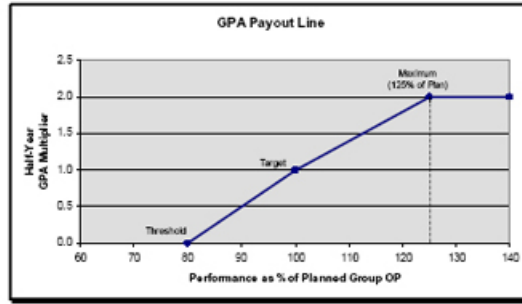
Annual (\$M)								
	Base Salary	Combined OP Threshold	Actual OP	CPA Mult.	CPA Target	Award %	Award \$	Total \$ Pool for Distribution
Case 1	\$225,000	400	555	1.00	10.0%	10.00%	\$22,500	5.50
Case 2 (Target Perf.)	\$225,000	400	500	1.00	10.0%	10.00%	\$22,500	0.00
Case 3	\$225,000	400	385	0.50	10.0%	5.00%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

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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:

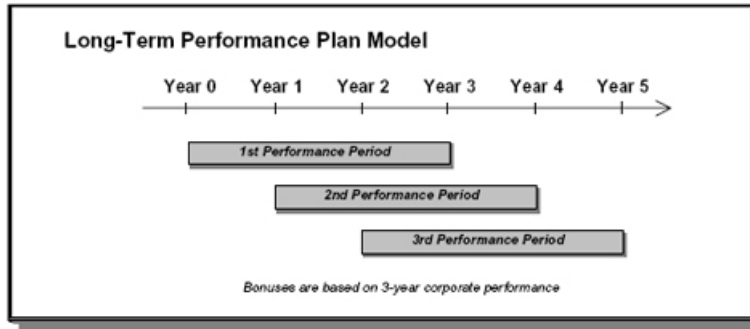
$$\text{STP Award} = \text{CPA} + \text{GPA} + \text{IPA}$$

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.

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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:

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

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.

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- 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 FASL 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 month's credit will be given where the Participant was actively employed for at least 15 days of a partial month.

VP PERFORMANCE RECOGNITION PROGRAM

- G. A participant who voluntarily terminates employment with AMD or FASL LLC and 1) has reached 60 years of age, 2) has 15 years of AMD and/or FASL 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 salary will be calculated based on the salary in effect at the time of the change in status.

VP PERFORMANCE RECOGNITION PROGRAM

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 FASL 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.

ADVANCED MICRO DEVICES, INC.

Management Continuity Agreement

Dear _____:

Advanced Micro Devices, Inc. (the “Company”) considers the establishment and maintenance of a sound and vital management to be essential to protecting and enhancing the best interests of the Company and its stockholders. The Company recognizes that, as is the case with many publicly held corporations, the possibility of a change of control may exist and that the uncertainty and questions which such possibility may raise among management may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders. Accordingly, the non-management members of the Company’s Board of Directors have determined that it is imperative to be able to rely upon management’s continuance and that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company’s management, including you, to their assigned duties without distraction in the face of the potentially disturbing circumstances arising from the possibility of a change of control of the Company.

In order to induce you to remain in the employ of the Company under such circumstances, this letter agreement sets forth the benefits which the Company agrees will be provided to you in the event there is a “Change of Control” of the Company under the circumstances described below. (“Change of Control” is defined in Section 1.) In addition, the Company is also willing to agree to provide you the benefits described herein in consideration of your agreement to the arbitration provisions set forth in Section 14 hereof.

1. **Change of Control.** For purposes of this Agreement, a “Change of Control” shall mean a change of control of a nature which would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (“Exchange Act”) or in response to any other form or report to the Securities and Exchange Commission or any stock exchange on which the Company’s shares are listed which requires the reporting of a change of control. In addition, a Change of Control shall be deemed to have occurred if (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing more than 20% of the combined voting power of the Company’s then outstanding securities; or (ii) in any two year period, individuals who were members of the Board of Directors (the “Board”) at the beginning of such period plus each new director whose election or nomination for election was approved by at least two-thirds of the directors in office immediately prior to such election or nomination, cease for any reason to constitute at least a majority of the Board, or (iii) a majority of the members of the Board in office prior to the happening of any event and who are still in office after such event, determines in its sole discretion within one year after such event, that as a result of such event there has been a Change of Control.

Notwithstanding the foregoing definition, "Change of Control" for purposes of this Agreement, shall exclude the acquisition of securities representing more than 20% of the combined voting power of the Company by the Company, any of its wholly owned subsidiaries, or any trustee or other fiduciary holding securities of the Company under an employee benefit plan now or hereafter established by the Company. As used herein, the term "beneficial owner" shall have the same meaning as under Section 13(d) of the Exchange Act, and related case law.

2. Term. This Agreement shall become effective immediately on the delivery of fully executed copies to both parties, and shall continue until canceled pursuant to the notice of either party. Either party hereto may provide written notice to the other of cancellation of this Agreement, to take effect on the date specified in such notice, but in no event shall such cancellation take effect less than two years from the date on which notice is given. Such notice shall be furnished in accordance with Section 11 of this Agreement.

3. Tax Indemnity.

(a) If all or any portion of the amounts payable to you on your behalf under this Agreement or otherwise are subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (or similar state tax and/or assessment), the Company shall pay to you an amount necessary to place you in the same after-tax position as you would have been in had no such excise tax been imposed. The amount payable pursuant to the preceding sentence shall be increased to the extent necessary to pay income and excise taxes due on such amount. The determination of the amount of any such tax indemnity shall initially be made by the independent accounting firm employed by the Company immediately prior to the Change of Control.

(b) If at a later date it is determined (pursuant to final regulations or published rulings of the IRS, final judgment of a court of competent jurisdiction or otherwise) that the amount of excise taxes payable by you is greater than the amount initially so determined, then the Company (or its successor) shall pay you an amount equal to the sum of (1) such additional excise taxes (2) any interest, fines and penalties resulting from such underpayment, plus (3) an amount necessary to reimburse you for any income, excise or other taxes payable by you with respect to the amounts specified in (1) and (2) above, and the reimbursement provided by this clause (3). If at a later date it is determined (pursuant to final regulations or published rulings of the IRS, final judgment of a court of competent jurisdiction or otherwise) that the amount of excise taxes payable by you is lesser than the amount initially so determined, then you shall pay to the Company (or its successor) an amount equal to such overpayment to the extent such is refunded to you.

(c) By signing this agreement, you and the Company both agree to cooperate with the person(s) calculating the amount of the tax indemnity, and will provide copies of whatever tax returns and other documents may be necessary to perform the calculation.

4. Termination of Employment Following Change of Control. If any of the events described in Section 1 hereof constituting a Change of Control shall have occurred, you shall be entitled to the benefits provided in Section 5 hereof upon the actual termination by the Company

or “Constructive Termination” of your employment within two years after such Change of Control, unless such termination is by the Company for Cause.

(a) Constructive Termination. For purposes of this Agreement, “Constructive Termination” shall mean a resignation by you due to any diminution or adverse change in the circumstances of your employment as determined in good faith by you, including, without limitation, your reporting relationships, job description, duties, responsibilities, compensation, perquisites, office or location of employment.

(b) Cause. For the purposes of this Agreement, the Company shall have a “Cause” to terminate your employment if you are determined by a court of law or pursuant to arbitration under Section 14 to have committed a willful act of embezzlement, fraud or dishonesty which resulted in material loss, material damage or material injury to the Company. In such an event, you shall have no rights under this Agreement.

(c) Notice of Termination. Any termination of your employment by the Company or by you for any reason whatsoever during the term of this Agreement shall be communicated by written notice of termination to the other party hereto (“Notice of Termination”).

(d) Date of Termination. “Date of Termination” shall mean a date which is within two years after a Change of Control and is either (1) the date specified in the Notice of Termination, if your employment is terminated by you during the term hereof; or (2) the date on which a Notice of Termination is given, if your employment is terminated for any other reason.

5. Benefits Upon Termination Following a Change Of Control.

(a) Amount of Benefits. The Company shall provide to you as soon as practicable, but not more than ten business days following the Date of Termination subsequent to a Change of Control of the Company, each of the following benefits:

(1) Severance Benefit. The Company shall pay you a lump sum severance benefit which shall equal three times the sum of (A) your Base Compensation, plus (B) the average of the two highest annual bonuses paid to you during the last five full calendar years immediately prior to the Change of Control. For purposes of this Section 5(a) (1), “Base Compensation” means your rate of annual salary, as in effect for the twelve-month period ending on the date six months prior to the Change of Control or on the Date of Termination, whichever is higher. Base Compensation does not include elements such as bonuses, reimbursement of interest paid on guaranteed loans, auto allowances, nor any income from equity based compensation, such as may result from the exercise of stock options or stock appreciation rights, or the receipt of restricted stock awards or the lapse of restrictions on such awards. If you were employed by the Company and/or any of its subsidiaries for less than one full calendar year immediately preceding the Change of Control, your “highest annual bonus” will be determined by annualizing the bonus earned during your period of employment.

(2) *Equity Compensation.* All unvested stock options, stock appreciation rights and restricted stock awards held by you at the time of your Date of Termination shall be deemed fully vested and exercisable as such Date of Termination, provided, that if any such option, right or award would, as a result of such early exercisability no longer qualify for exemption under Section 16 of the Exchange Act, then such option, right or award shall be fully vested but shall not become exercisable until the earliest date on which it could become exercisable and also qualify for exemption from Section 16 of the Exchange Act. All vested options held by you, including those deemed fully vested as of the Date of Termination shall become automatically exercisable for a period of one (1) year from the Date of Termination; provided, however, in no event shall any option remain exercisable beyond the maximum period allowed therefor in the stock option plan under which it was granted. This agreement shall serve as an amendment to all of your outstanding stock options, restricted stock awards and stock appreciation rights as of the Date of Termination.

(3) *Accrued Bonus.* The Company shall pay you an amount equal to the pro rata amount of the annual bonus accrued under the Company's Executive Bonus Plan for the portion of the year to the Date of Termination.

(4) *Company Car.* The Company shall allow you the continued use of the Company automobile, on the same terms which existed prior to the Change of Control, for twelve (12) months following the Date of Termination.

(5) *Financial and Tax Planning.* The Company shall provide you with continued personal financial planning and tax planning services up to \$4,000 for twelve (12) months following the Date of Termination.

(6) *Other Benefits.* The Company shall provide for a period of twelve(12) months following the Date of Termination, health and welfare benefits at least comparable to those benefits in effect on your Date of Termination, including but not limited to medical, dental, disability, dependent care, and life insurance coverage. At the Company's election, health benefits may be provided by reimbursing you for the cost of converting a group policy to individual coverage, or for the cost of extended COBRA coverage. The Company shall also pay you an amount calculated to pay any income taxes due as a result of the payment by the Company on your behalf for such health benefits. Such tax payment shall be calculated to place you in the same after-tax position as if no such income had been imposed.

(b) *Other Benefits Payable.* The benefits described in subsection (a) above shall be payable in addition to, and not in lieu of, all other accrued or vested or earned but deferred compensation, rights, options or other benefits which may be owed to you following termination of your employment, irrespective of whether your termination was preceded by a Change of Control, including but not limited to accrued vacation or sick pay, amounts or benefits payable under any employment agreement or any bonus or other compensation plans, stock option plan, stock ownership plan, stock purchase plan, life insurance plan, health plan, disability plan or similar plan.

6. Payment Obligations Absolute. The Company's obligation to pay the benefits described herein shall be absolute and unconditional and shall not be affected by any circumstances, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which the Company or any of its subsidiaries may have against you or anyone else. In the event of any dispute concerning your right to payment, the Company shall nevertheless continue to pay to you your Base Compensation (as such term is defined in Section 5) until the dispute is resolved. Any such amounts paid following your termination of employment shall be credited against the amounts otherwise due to you under this Agreement or, in the event the Company prevails, shall be repaid to the Company.

7. Legal Fees. The Company shall also pay forthwith upon written demand from you all legal fees and expenses reasonably incurred by you in seeking to obtain or enforce any right or benefit provided by this Agreement. In the event you do not prevail in any ensuing arbitration or litigation, the Company shall absorb its own costs, expenses, and attorneys' fees, and you shall reimburse the Company for one-half of your costs, expenses, and attorneys' fees.

8. Mitigation. You shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced or offset in any way whatsoever by any amount received by you for any reason whatsoever from another employer or otherwise after the Date of Termination.

9. Indemnification. For at least six years following a Change of Control, you shall continue to be indemnified under the Company's Certificate of Incorporation and Bylaws at least to the same extent as prior to the Change of Control, and you shall be covered by the directors' and officers liability insurance, the fiduciary liability insurance and the professional liability insurance policies that are the same as, or provide coverage at least equivalent to, those the Company carried prior to the Change of Control.

10. Successors; Binding Agreement.

(a) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain such agreement prior to the effectiveness of any such succession shall be a breach of this Agreement and shall entitle you to compensation from the Company in the same amount and on the same terms as you would be entitled hereunder if the Company had terminated your employment without Cause after a Change of Control, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Date of Termination. As used in this Agreement, "Company" shall mean the Company as hereinabove defined and any successor to its business and/or assets as aforesaid which executes and delivers the agreement provided for in this Section or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law.

(b) This Agreement shall terminate upon your death except that if you should die while you are entitled to receive any amounts under this Agreement but which are unpaid at your date of death, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee, or other designee or, if there be no such designee, to your estate. This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees.

11. **Notice.** For the purposes of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by the United States registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth on the first page of this Agreement, provided that all notices to the Company shall be directed to the Chairman of the Board of Directors of the Company with a copy to the Secretary of the Company, or such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

12. **Amendments.** No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by you and the Company's Chief Executive Officer. No waiver by either party hereto at any time or any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

13. **Validity.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

14. **Arbitration.**

(a) Arbitration shall be the exclusive and final forum for settling any disagreement, dispute, controversy or claim arising out of or in any way related to (i) this Agreement or the subject matter thereof or the interpretation hereof or any arrangements relating hereto or contemplated herein or the breach, termination or invalidity hereof; or (ii) the provision of or failure to provide any other benefits upon a Change of Control pursuant to any other employment agreement, bonus or compensation plans, stock option plan, stock ownership plan, stock purchase plan, life insurance plan or similar plan or agreement with the Company and/or any of its subsidiaries as Change of Control may be defined in such other agreement or plan, which benefits constitute "parachute payments" within the meaning of Section 280G of the Code. If this Section 14 conflicts with any provision in any such compensation or bonus plan, stock option plan, or any other similar plan or agreement, this provision requiring arbitration shall control.

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- (b) The arbitration shall be conducted in accordance with the Commercial Arbitration Rules (the "Arbitration Rules") of the American Arbitration Association (the "AAA").
- (c) The arbitral tribunal shall consist of one arbitrator. Except as otherwise provided in Section 8, the Company shall pay all the fees, if any, and expenses of such arbitration.
- (d) The arbitration shall be conducted in San Jose or in any other city in the United States of America as the parties to the dispute may designate by mutual written consent.
- (e) Any decision or award of the arbitral tribunal shall be final and binding upon the parties to the arbitration proceeding. The parties hereto hereby waive to the extent permitted by law any rights to appeal or to review of such award by any court or tribunal. The parties hereto agree that the arbitral award may be enforced against the parties to the arbitration proceeding or their assets wherever the award may be entered in any court having jurisdiction thereof.
- (f) The parties stipulate that discovery may be had in any such arbitration proceeding as provided in Section 1283.05 of the California Code of Civil Procedure, as may be amended or revised from time to time.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

16. **Withholding of Taxes.** The Company may withhold from any amounts payable under this Agreement all federal, state, city, or other taxes as shall be required pursuant to any law or government regulation or ruling.

17. **Nonassignability.** This Agreement is personal in nature and neither of the parties hereto shall, without the consent of the other, assign or transfer this Agreement or any rights or obligations hereunder, except as provided in Section 10 above. Without limiting the foregoing, your right to receive payments hereunder, shall not be assignable or transferable, whether by pledge, creation of a security interest or otherwise, other than by a transfer by will or by the laws of descent and distribution and in the event of any attempted assignment or transfer contrary to this Section the Company shall have no liability to pay any amounts so attempted to be assigned or transferred.

18. **No Right to Employment.** Nothing in this Agreement shall confer on you any right to continue in the employ of the Company, or shall interfere with or restrict in any way the rights of the Company, which are hereby expressly reserved, to discharge you at any time for any reason whatsoever, with or without cause.

19. **Miscellaneous.** No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement. This Agreement shall not affect your rights under any pension, welfare or fringe benefit arrangements of the Company under which you are entitled to receive any benefits. The validity, interpretation, construction and performance of this

Agreement shall be governed by the laws of the State of Delaware. The provisions of this Agreement, and any payment provided for hereunder, shall not reduce any amounts otherwise payable, or in any way diminish your existing rights, or rights which would accrue solely as a result of the passage of time, under any employment agreement or other contract, plan or agreement with the Company.

If this letter correctly sets forth our agreement on the subject matter hereof, kindly sign and return to the Company the enclosed copy of this letter which will then constitute our agreement on this subject.

Sincerely,

ADVANCED MICRO DEVICES, INC.

By: _____

Agreed to this _____ day

of _____ 20__

(Signature)

LETTER AGREEMENT

This Letter Agreement ("Agreement"), having an Effective Date of September 13, 2004, is entered into by and between ADVANCED MICRO DEVICES, INC., a Delaware corporation having an office at Sunnyvale, California ("AMD"), and INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation, having an office at Burlington, Vermont ("IBM").

WHEREAS, AMD and IBM previously entered into three (3) technology license agreements relating to a technology known as C-4 plating technology in which certain license rights were granted to AMD;

WHEREAS, AMD and IBM desire to extend the license rights previously granted therein to AMD.

NOW, THEREFORE, AMD and IBM agree as follows:

Section 1 – Definitions

"Another Manufacturer" shall have the meaning in the C-4 Plating Technology Transfer and Licensing Agreement.

"Bumping" shall have the meaning in the C-4 Plating Technology Transfer and Licensing Agreement.

"Bumped" shall mean an Integrated Circuit after the process of Bumping has been performed.

"C-4 Agreements" shall mean, collectively, the C-4 Plating Technology Transfer and Licensing Agreement, C-4 Tighter Pitch Workshop Agreement, and C-4 Technical Assistance and Short Loop Support Agreement.

"C-4 Plating Technology Transfer and Licensing Agreement" shall mean the C-4 Plating Technology Transfer and Licensing Agreement between AMD and IBM having a last signature date of April 29, 1999.

"C-4 Tighter Pitch Workshop Agreement" shall mean the C-4 Tighter Pitch Workshop Agreement between AMD and IBM having a last signature date of March 23, 2001.

AMD/IBM Confidential

Execution Copy
September 13, 2004

“C-4 Technical Assistance and Short Loop Support Agreement” shall mean the C-4 Technical Assistance and Short Loop Support Agreement between AMD and IBM having a last signature date of July 16, 2001.

“Dresden Facility” shall mean an AMD Subsidiary that owns and operates AMD’s 300mm semiconductor manufacturing production line located in Dresden, Germany, wherein all of the remaining ownership interest is solely owned or controlled, directly or indirectly, by (i) one or more corporations, companies or other entities (including a government entity) which are purely financial investors who are not engaged in the design, development, manufacture, marketing or sale of Licensed Products, and/or by (ii) up to two (2) other owners that are neither government or financial owners; provided, however, that the ownership percentage of all of such owners other than AMD, singly or in the aggregate, shall not be at or above fifty percent (50%). Such entity shall be considered the Dresden Facility which is entitled to retain the licenses and other benefits provided by this Agreement to the Dresden Facility only so long as such ownership and control percentage by AMD and other specified entities in the Dresden Facility exists.

“Integrated Circuit” shall have the meaning in the C-4 Plating Technology Transfer and Licensing Agreement.

“Licensed Products” shall have the meaning in the C-4 Plating Technology Transfer and Licensing Agreement.

“Subsidiary” shall have the meaning in the C-4 Plating Technology Transfer and Licensing Agreement.

Section 2 – Licenses

2.1 IBM, on behalf of itself and its Subsidiaries, to the extent it has the right to do so and subject to Sections 2.2 and 3 of this Agreement, hereby extends the license rights granted to AMD in the C-4 Agreements for AMD to (i) perform Bumping on 300mm semiconductor wafers solely for AMD only in the Dresden Facility, (ii) manufacture Licensed Products solely for AMD only in the Dresden Facility using Bumping on 300mm semiconductor wafers, (iii) use solely for AMD Licensed Products only in the Dresden Facility using Bumping on 300mm semiconductor wafers, (iv) sell and have sold worldwide solely under the AMD brand name Licensed Products manufactured using Bumping on 300mm semiconductor wafers, and (v) manufacture only in the Dresden Facility and have manufactured by Another Manufacturer for AMD’s internal use only, any apparatus designed or modified to implement Bumping of 300mm semiconductor wafers.

2.2 The license rights extended to AMD in Section 2.1 are nonexclusive, nontransferable, royalty-bearing (as provided for in the surviving terms and conditions of the C-4 Agreements) and revocable (as provided for in the surviving terms and conditions of the C-4 Agreements).

AMD/IBM Confidential

Execution Copy
September 13, 2004

2.3 Beginning on the Effective Date, IBM hereby grants to AMD, to the extent it has the right to do so and subject to Section 3, the right to use the Licensed Technology to perform Bumping of 200mm semiconductor wafers for third parties.

2.4. The license rights granted to AMD in Section 2.3 are nonexclusive, nontransferable, royalty-bearing (as provided for in Section 3) and revocable (as provided for in the surviving terms and conditions of the C-4 Agreements).

Section 3 – Compensation

3.1 In consideration for the licenses granted hereunder, AMD agrees to pay IBM a license fee in the sum of Eleven Million Two Hundred and Fifty Thousand Dollars (\$11,250,000.00), which sum shall be nonrefundable and noncancelable, notwithstanding any termination or expiration of this Agreement.

3.2 The sum specified in Section 3.1 shall be payable without invoice from IBM according to the following schedule:

- a. Five Million Six Hundred and Twenty Five Thousand Dollars(\$5,625,000.00) by September 17, 2004; and
- b. Five Million Six Hundred and Twenty Five Thousand Dollars (\$5,625,000.00) by March 13, 2005.

If the payment pursuant to the obligation set forth in Section 3.2a. is not made when due, then all licenses and other rights granted herein to AMD shall automatically terminate, and such termination shall be effective retroactively to the Effective Date so that such rights granted herein shall be void ab initio.

3.3 AMD shall be permitted to perform Bumping of *** (***) 200mm semiconductor wafers per calendar quarter for third parties. For each 200mm semiconductor wafer Bumped for third parties in excess of the *** (***) per calendar quarter, AMD shall pay IBM a royalty in the amount of *** (***)% of the bumping price charged by AMD to the third parties. AMD's royalty obligation under Section 3.3 shall begin on the Effective Date and continue through December 31, ***, after which AMD shall have no further royalty obligation under this Section 3.3, irrespective of AMD thereafter Bumping an unlimited number of 200mm semiconductor wafers for third parties after December 31, ***.

3.4 AMD shall maintain a complete, clear and accurate record of the quantity of all products serviced, sold, leased or otherwise disposed of and any other relevant information to the extent it is required to determine whether AMD is paying the correct royalty amount hereunder. To ensure compliance with the terms and conditions of this Agreement, IBM shall have the right to audit all relevant accounting and sales books and

*** *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated November 4, 2004.*

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September 13, 2004

records of AMD and the Dresden Facility. The audit will be conducted by a mutually acceptable audit firm and shall be conducted following reasonable prior written notice (at least forty-five (45) days in advance of such audit) during regular business hours at an office where such records are normally maintained and in such a manner as not to interfere with AMD's normal business activities and shall be restricted only to those records necessary to verify AMD's obligations hereunder. The audit report provided to IBM may only include the information necessary to determine whether or not any underpayment or overpayment exists, and if it exists, the amount of such underpayment or overpayment. IBM shall instruct the auditor to include only business information in the audit report to IBM. IBM shall use the business information reported by the auditor only for the purpose of determining royalty payments and for no other purpose. In no event shall audits be made hereunder more frequently than once in every twelve (12) months and the audit shall not cover any records from a period of time previously audited. If any audit should disclose any underpayment or overpayment, the owing party shall within forty-five (45) days pay the difference. The cost of such audit will be borne by IBM. AMD shall be provided with a copy of the audit report within a reasonable period of time after its completion. The independent audit firm shall not be hired on a contingent fee basis and shall have confidentiality agreements in place sufficient to protect AMD's confidential information.

3.5 The royalty of Section 3.3 shall accrue when a product is first serviced, sold, leased or otherwise disposed of. For the purpose of determining such royalty, products shall be considered serviced, sold, leased or otherwise disposed of when AMD issues to a third party an invoice therefor. If not invoiced, then products are to be considered serviced, sold, leased or otherwise disposed of when delivered to a third party, or when paid for by such third party if paid for before delivery. If not invoiced, delivered or paid for before delivery, products are to be considered serviced, sold, leased or otherwise disposed of at the earlier of when put into use or when possession is transferred to a third party.

3.6 Accrued royalties shall be calculated on a calendar quarter basis. Any royalties due IBM for any calendar quarter shall be paid to IBM by forty-five (45) days after the immediately preceding calendar quarter. Any accrued royalties paid to IBM are nonrefundable and noncancelable. AMD may deduct from the accrued royalties calculation in this Section 3.6 those royalties accrued on products which have been returned to AMD and for which credit allowances have been made.

3.7 Within forty-five (45) days after the end of each quarter, AMD shall furnish to IBM a written statement showing the number of Bumped 200mm semiconductor wafers for third parties which were serviced, made, used, sold, leased or otherwise disposed of during the immediately preceding calendar quarter and the royalties payable thereon. If no royalties are payable, that fact shall be shown on such statement.

3.8 AMD shall bear and pay, and indemnify and hold IBM harmless from any and all taxes (including sales, royalty, value added, and property taxes) imposed by any national government (including any political subdivision thereof) of any country, as the result of the existence of this Agreement or the exercise of rights hereunder, or arising from the

purchase of goods and services licensed hereunder, and IBM shall not be responsible for any taxes that arise from the foregoing. Notwithstanding the foregoing, AMD shall not be liable for any taxes or assessments based on the net income of IBM.

3.9 AMD shall be liable for interest on any and all overdue payments and royalties required to be paid to IBM under this Agreement, commencing on the date such overdue payment or royalties become due, at an annual rate of eighteen percent (18%). If such interest rate exceeds the maximum legal rate in the jurisdiction where a claim therefor is being asserted, the interest rate shall be reduced to such maximum legal rate. For avoidance of doubt, all licenses hereunder shall be suspended during any period in which payments or royalties are overdue.

3.10 All royalties and payments to IBM that result from this Agreement shall be made in United States Dollars (US\$) and are to reference this Agreement and be sent by electronic funds transfer to the following account:

IBM Director of Licensing
International Business Machines Corporation
PNC BANK
500 First Avenue
Pittsburgh, PA 15219
Bank Account Number: ***
ABA Routing Number: ***

A License Reference Number will be assigned to this Agreement upon execution. This number will be included in all wire transfer payments and tax credit certificates relating to this Agreement.

Section 4 – General

4.1 The surviving terms and conditions of the C-4 Agreements are incorporated by reference herein and each of the parties to this Agreement shall be bound by such surviving terms and conditions as if literally written herein. In addition, references to “Agreement” in the surviving terms and conditions of the C-4 Agreements shall be deemed to include this Agreement, references to Section 2 in the surviving terms and conditions of the C-4 Agreements shall be deemed to include Section 2 of this Agreement and references to Section 6 in the surviving terms and conditions of the C-4 Agreements shall be deemed to include Section 3 of this Agreement. In the event of conflict or ambiguity between the surviving terms and conditions of any of the C-4 Agreements, the C-4 Plating Technology Transfer and Licensing Agreement shall control. In the event of conflict or ambiguity between the terms and conditions of this Agreement and the C-4 Plating Technology Transfer and Licensing Agreement, this Agreement shall control.

4.2 This Agreement and the terms and conditions made applicable to this Agreement in Section 4.1 are the sole agreement of the parties with respect to the subject matter hereof.

*** *Indicates that certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested pursuant to the Confidential Treatment Request dated November 4, 2004.*

AMD/IBM Confidential

Execution Copy
September 13, 2004

4.3 This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original, but each of which together shall constitute one and the same agreement. Fax signatures will have the same legal effect as original signatures.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates written below.

ADVANCED MICRO DEVICES, INC.

By: /s/ Daryl Ostrander

Name: Daryl Ostrander
Title: Senior VP, Logic Technology & Manufacturing, Product
Technology Implementation CPG

Date: September 15, 2004

AMD/IBM Confidential

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: /s/ Harry C. Calhoun

Name: Harry C. Calhoun
Title: VP Strategy – Technology, IBM Systems and Technology Group

Date: September 15, 2004

Execution Copy
September 13, 2004

Amendment and Restatement of
“S” PROCESS DEVELOPMENT AGREEMENT
(effective as of December 28, 2002)
between
INTERNATIONAL BUSINESS MACHINES CORP.
And
ADVANCED MICRO DEVICES, INC.

Amendment and Restatement of “S” Process Development Agreement between AMD and IBM
IBM - AMD Confidential

This Agreement is made effective as of the 28th day of December, 2002 (hereinafter referred to as the "Effective Date") by and between International Business Machines Corporation ("IBM"), incorporated under the laws of the State of New York, U.S.A. and having an office for the transaction of business at 2070 Route 52, Hopewell Junction, NY 12533, U.S.A, and Advanced Micro Devices having an office for the transaction of business at One AMD Place, P.O. Box 3453, Sunnyvale, CA 94088-3453 "(AMD)". IBM, and AMD may be individually referred to herein as a "Party," or collectively as the "Parties."

WHEREAS, IBM has been developing leading edge semiconductor manufacturing processes with Sony and Toshiba, and the Parties hereto desire to continue to participate in development efforts under this Agreement;

WHEREAS, the Parties possess complementary skills and know-how, which the Parties wish to contribute toward such process development;

WHEREAS, each Party agrees to provide certain personnel and grant the other Parties certain technology licenses in support of such process development;

WHEREAS, through the use of such complementary skills and know-how the Parties desire to achieve resource efficiencies and cost savings, and reduce the technical risk associated with the development of high end semiconductor processes in order to complete development of and put into production, leading edge high end semiconductor manufacturing processes sooner than would be possible with any of the Parties acting independently;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows. For avoidance of doubt, the Agreement as defined below covers its subject matter after its Effective Date including matters provided for in the "S" Process Development Agreement (Effective as of December 28, 2002) as amended and restated .

SECTION 1-DEFINITIONS

Unless expressly defined and used with an initial capital letter in this Agreement, words shall have their normally accepted meanings. The headings contained in this Agreement or in any exhibit, attachment or appendix hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, and the singular includes the plural. The following terms shall have the described meanings:

"Advanced Semiconductor Technology Center" or "ASTC " means the IBM 200mm or 300mm wafer process development facility used for conducting the Process Development Projects.

Amendment and Restatement of "S" Process Development Agreement between AMD and IBM
IBM - AMD Confidential

“Agreement” means the terms and conditions of this Amendment and Restatement of “S” Process Development Agreement together with any exhibits, attachments and appendices hereto.

“AMD Deputy Project Leader” means the individual, if any, appointed by AMD pursuant to Section 4.2 below.

“ASIC Product” shall mean an SOI Integrated Circuit that is not a Foundry Product and wherein all of the following conditions are met: (i) at least one of (a) the functional requirements, or (b) the design, for such SOI Integrated Circuit product is provided to a Party from a Third Party; (ii) such Party participated in an aspect of the definition and design of such product; and (iii) such Party is contractually bound to manufacture such product solely for, and to sell such product solely to, such Third Party or its distributor or other recipient solely for the benefit of such Third Party.

“Background Know-How” means methods, techniques, designs, structures, software, and specifications developed or acquired by a Party outside the performance of the Process Development Projects, which such Party provides to the other Party for use in a Process Development Project pursuant to Section 3. Such Background Know-How shall not include, Packaging Technology, Mask Fabrication and Photoresist Technology, Memory, SiGe Technology, or Chip Designs.

“BEOL” (Back End of Line) shall mean those aspects of Background Know-How and Specific Results that are directed to methods and processes of interconnecting the source, gate, or drain electrodes of FET transistors formed on a wafer, including initial passivation of such FET transistors with a dielectric, up to and not including Packaging Technology. For the avoidance of doubt, “BEOL” shall not include local interconnects made of tungsten.

“Bulk CMOS” shall mean CMOS semiconductor manufacturing technology carried out on a wafer that is not an SOI Wafer.

“Bulk CMOS Information” shall mean those aspects of Background Know-How and Specific Results that are (i) directed to Lithography and BEOL, and/or (ii) selected by IBM either for incorporation into an IBM Bulk CMOS process or otherwise pursuant to Section 3.4.

“***” shall mean *** and its subsidiaries located in ***.

“***-AMD Manufacturing Facility” shall mean any facility for the manufacture of Integrated Circuits located in *** or Dresden, Germany and either owned entirely by *** and AMD or owned by ***, AMD and all of the remaining such ownership interest is solely owned or controlled, directly or indirectly, by a government entity or one or more corporations, companies or other entities which are purely financial investors who are not engaged in the design, development, manufacture, marketing or sale of Semiconductor Products.

“Chip Design(s)” shall mean any design of one or more Integrated Circuits and/or Semiconductor Products, including (by way of example and not limitation) random access memory (RAM)s, read only memory (ROM)s, microprocessors, ASICs and other logic designs,

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and analog circuitry; provided, however, that “Chip Designs” shall not include (i) alignment marks or test structures and associated layout and data used in the Process Development Projects for process development, (ii) process kerf test structures, layout, and data of the test chip(s) (including SRAM macro cells) as well as such test chips themselves used for the development work of the Process Development Projects unless specifically excluded, or (iii) other product designs as mutually agreed by the Parties to be used as qualification vehicles in the Process Development Projects. For the avoidance of doubt, all of (i) through (iii) above shall be treated as Specific Results to the extent utilized in a Process Development Project.

“CMOS 10S” means a 90 nanometer CMOS logic fabrication process currently under development by IBM, the development of which is to be continued pursuant to this Agreement, for the fabrication of SOI Integrated Circuits, as further defined in Exhibit A.1, attached hereto.

“CMOS 10SE” means a 90 nanometer CMOS logic fabrication process currently under development by IBM, the development of which is to be continued pursuant to this Agreement, which is a performance enhanced version of CMOS 10S, as further defined in Exhibit A.2.

“CMOS 11S” means a 65 nanometer CMOS logic fabrication process currently under development by IBM, the development of which is to be continued pursuant to this Agreement, for the fabrication of SOI Integrated Circuits, as further defined in Exhibit A.3.

“CMOS 11S2” means a 65 nanometer CMOS logic fabrication process currently under development by IBM, the development of which is to be continued pursuant to this Agreement, which is a performance enhanced version of CMOS 11S, as further defined in Exhibit A.4.

“CMOS 12S” means a 45 nanometer CMOS logic fabrication process currently under development by IBM, the development of which is to be continued pursuant to this Agreement, for the fabrication of SOI Integrated Circuits, as further defined in Exhibit A.5.

“CMOS 12S2” means a 45 nanometer CMOS logic fabrication process currently under development by IBM, the development of which is to be continued pursuant to this Agreement, which is a performance enhanced version of CMOS 12S, as further defined in Exhibit A.6.

“CMOS 13S” means a 32 nanometer CMOS logic fabrication process currently being researched and undergoing feasibility evaluations (“Pre-T0”) by IBM. If IBM performs post Pre-T0 development work in the ASTC on a 32 nanometer CMOS logic fabrication process for the manufacture of SOI Integrated Circuits, then such post Pre-T0 development will be continued pursuant to this Agreement.

“Designated Invention” means an Invention for which a patent application has been filed by one or more of the Parties pursuant to Sections 11.1 or 11.2.

“Derivative Process(es)” shall have the meaning ascribed to it in Section 8.1

“Embedded DRAM” or “eDRAM” shall mean a device that either (i) primarily carries out logic functions, and includes one or more dynamic random access memory (DRAM) cells embedded

within logic circuitry on the same semiconductor substrate, or (ii) primarily carries out memory functions, and includes one or more DRAM cells in combination with a static random access memory (SRAM) array on the same semiconductor substrate (including an array of SRAM cells linked with bit lines, word lines, sense amplifiers and decoders).

“Foundry Product” shall mean an SOI Integrated Circuit wherein all the following conditions are met: (i) the ***, or *** and/or ***, for such SOI Integrated Circuit product ***; (ii) *** of such product; and (iii) *** is contractually bound to ***.

“IBM Project Leader” means the individual appointed by IBM pursuant to Section 4.2, below, to provide day-to-day oversight for the Process Development Projects.

“Integrated Circuit” means an integral unit formed on a semiconductor substrate including a plurality of active and/or passive circuit elements formed at least in part of semiconductor material. For clarity, “Integrated Circuit” shall include charge-coupled devices (“CCDs”).

“Invention” means any invention, discovery, design or improvement, conceived or first actually reduced to practice solely or jointly by one or more Representatives of one or more of the Parties or their respective contractors during the term of this Agreement and in the performance of the Process Development Projects.

“Licensed Product” means: (i) SOI Integrated Circuits other than Foundry Products, (ii) Integrated Circuits that combine Bulk CMOS and SOI Device Information other than Foundry Products, or (iii) Bulk CMOS products other than Foundry Products.

“Lithography” shall mean those aspects of Background Know-How and Specific Results directed to (a) process technology-dependent groundrules or process technology-dependent special rules for shapes replication as developed by the Parties for the generation of photomasks used for development and qualification of a semiconductor process technology in the Process Development Projects, (b) resolution enhancement techniques specifically created pursuant to the Process Development Projects to generate mask build data, (c) such photomasks themselves and the data files used therefor as are used in the Process Development Projects, (d) lithography process sequence as utilized in the Process Development Projects, and (e) mask data generation sequence as utilized in the Process Development Projects.

“Management Committee” shall have the meaning ascribed to it in Section 4.1.

“Mask Fabrication and Photoresist Technology” shall mean any process, procedure, Proprietary Tools (e.g. the Niagara software developed by IBM), or hardware tool used in the fabrication of photomasks, as well as the photomasks themselves, and/or the formulation and/or manufacture of photoresist; provided, however, that “Mask Fabrication and Photoresist Technology” shall not include Lithography.

“Memory” means Chip Designs and fabrication processes specifically related to read only memory (ROM), dynamic random access memory (DRAM), programmable ROMs, magnetic RAM (MRAM), ferroelectric RAM, and Embedded DRAM. For the avoidance of doubt, “Memory” shall not include static RAM (SRAM) macros utilized in the Process Development Projects as test vehicles.

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“Net Selling Price” for each unit of a particular ASIC Product means the net revenue recorded by AMD (including Wholly Owned Subsidiaries and Related Subsidiaries of AMD) with respect to an ASIC Product less (a) shipping, (b) insurance, and (c) sales, value added, use or excise taxes, to the extent to which they are actually paid or allowed, and less allowances to the extent they are actually allowed. If ASIC Products are sold, leased or otherwise transferred in a higher level of assembly or in the course of a transaction that includes other products or services with no separate bona fide price to be charged for the ASIC Products, the applicable Net Selling Price for the purpose of calculating royalties shall be the fair market value of the ASIC Product, but no less than the average Net Selling Price of all such units of other ASIC Products sold, leased, or otherwise transferred to a Third Party by AMD (and/or by Wholly Owned Subsidiaries and Related Subsidiaries of AMD), whichever the case may be, during the preceding half year.

“Packaging Technology” shall mean any process, procedure, software, or hardware tools used in the packaging of integrated circuit products into single-chip packages, multi-chip packages, or any other higher levels of assembly, including but not limited to IBM’s collapsible chip carrier connection (“C4”) interconnect technology; provided, however “Packaging Technology” shall not include the formation of layers on a wafer up to and including the final via layer (referred to as LV, TV, or FV level), but shall include any process, procedure, or practice subsequent to such step.

“Process Development Project(s)” means the CMOS 10S, CMOS 10SE, CMOS 11S, CMOS 11S2, CMOS 12S, CMOS 12S2, and if its development is continued pursuant to this Agreement, CMOS13S, development work conducted jointly by Representatives of the Parties pursuant to the terms and conditions of this Agreement, as more fully set forth in Section 3.1, below.

“Project Leaders” means the IBM Project Leader and the AMD Deputy Project Leader.

“Proprietary Tools” means software (in source code form or in object code form), models and/or data, and other instrumentalities that are not commercially available and are either owned by a Party or under which a Party has the right to grant royalty-free licenses, and that are used in Process Development Projects.

“Qualification” means the T2 date identified in the schedule for each Process Development Project, as set forth in Exhibit B.

“Related Subsidiary” shall mean a corporation, company or other entity:

- (a) one hundred percent (100%) of whose outstanding shares or securities (such shares or securities representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by the Parties hereto; or

(b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, or other entity one hundred percent (100%) of whose ownership interest representing the right to (i) make the decisions for such corporation, company or other entity, or (ii) vote for, designate, or otherwise select members of the highest governing decision making body, managing body or authority for such partnership, joint venture, unincorporated association or other entity is, now or hereafter, owned or controlled, directly or indirectly, by the Parties hereto;

provided that in either case, such entity shall be considered a Related Subsidiary, and shall be entitled to retain the licenses and other benefits provided by this Agreement to the Related Subsidiary, only so long as such ownership or control exists.

“Representative(s)” means, a Party’s employees and employees of a Party’s Wholly Owned Subsidiaries.

“Semiconductor Product” means a component that contains an Integrated Circuit on a single or multichip module that incorporates a means of connecting those Integrated Circuits with other electronic elements (active or passive) and/or means to make external electrical connections to such elements, but which excludes any means for a user to operate the functions therein (e.g., buttons, switches, sensors).

“Silicon-Germanium Technology” or “SiGe Technology” shall mean semiconductor fabrication processes and design techniques incorporating silicon and germanium layers, provided, however, “SiGe Technology” shall not include strained silicon channel MOSFET techniques carried out on SOI Wafers.

“Silicon-On-Insulator Wafer” or “SOI Wafer” shall mean a, single-crystal silicon wafer bearing a horizontally-disposed isolating silicon dioxide (SiO₂) layer, in turn bearing a single-crystal silicon layer or a polysilicon layer, which is separated from the underlying silicon by the silicon dioxide layer and in which one or more active or passive integrated circuit structures are formed.

“SOI Device Information” means Background Know-How and Specific Results pertaining to all process methods, steps, and structures created on commercially available SOI Wafers other than Bulk CMOS Information.

“SOI Integrated Circuit” shall mean an Integrated Circuit fabricated utilizing SOI Device Information and built on SOI Wafers.

“Specific Results” shall mean information and items, other than i) Proprietary Tools, ii) Packaging Technology, iii) Mask Fabrication and Photoresist Technology, iv) Memory, v) SiGe Technology, and vi) Chip Designs, developed and/or contributed to the Process Development Projects by the Parties pursuant to the development work of the Process Development Projects as follows:

The documentation produced for the Process Development Projects as set forth in Exhibit J attached hereto (“Documentation”);

All information and items resulting from the Process Development Projects, including but not limited to methods, techniques, unit processes, process flows, structures in silicon, test software, and specifications for equipment, chemicals, masks and consumables;

Any Background Know-How provided to the Process Development Project(s) by a Party pursuant to Section 3, below.

“Subsidiary” means a corporation, company or other entity:

- (a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by a Party hereto, or
- (b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is now or hereafter, owned or controlled, directly or indirectly, by a Party hereto,

provided that in either case such entity shall be considered a Subsidiary, and shall be entitled to retain the licenses and other benefits provided by this Agreement to Subsidiaries, only so long as such ownership or control exists.

“Technical Coordinators” means the individuals referred to in Section 4.4, below.

“Term” means the period of time from the Effective Date and ending on December 31, 2008.

“Test Site” means a device or circuit evaluation site on a wafer.

“Third Party” or “Third Parties” means an entity or entities other than the Parties or their Wholly Owned Subsidiaries or Related Subsidiaries.

“Wholly Owned Subsidiary” shall mean 1) a corporation, company or other entity:

- (a) one hundred percent (100%) of whose outstanding shares or securities (such shares or securities representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by a Party; or
- (b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, or other entity but one hundred percent of whose ownership interest representing the right to (i) make the decisions for such corporation, company or other entity, or (ii) vote for, designate, or otherwise select

members of the highest governing decision making body, managing body or authority for such partnership, joint venture, unincorporated association or other entity is, now or hereafter, owned or controlled, directly or indirectly, by a Party;

provided that in either case such entity shall be considered a Wholly Owned Subsidiary, and shall be entitled to retain the licenses and other benefits provided by this Agreement to Wholly Owned Subsidiaries, only so long as such ownership or control exists; or 2) a corporation, company or other entity:

(c) at least seventy five percent (75%) of whose outstanding shares or securities (such shares or securities representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by a Party; or

(d) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, or other entity but at least seventy five percent (75%) of whose ownership interest representing the right to (i) make the decisions for such corporation, company or other entity, or (ii) vote for, designate, or otherwise select members of the highest governing decision making body, managing body or authority for such partnership, joint venture, unincorporated association or other entity is, now or hereafter, owned or controlled, directly or indirectly, by a Party

provided, that in either case (c) or (d) above, (i) all of the remaining such ownership interest is solely owned or controlled, directly or indirectly, by one or more corporations, companies or other entities which are purely financial investors who are not engaged in the design, development, manufacture, marketing or sale of Semiconductor Products, and (ii) such entity shall be considered a Wholly Owned Subsidiary, and shall be entitled to retain the licenses and other benefits provided by this Agreement to Wholly Owned Subsidiaries, only so long as such ownership or control exists.

SECTION 2 – ASTC

IBM has established the Advanced Semiconductor Technology Center in East Fishkill, New York. IBM shall be responsible for the operations of the ASTC, including, but not limited to capacity, staffing, and capital purchases. The Parties acknowledge that capital purchases necessary for the continued development of the Process Development Projects past December 31, 2005 are conditioned upon the receipt of IBM corporate management and Board of Directors approval. If such approvals are not received by October 31, 2004 either Party shall have the right to terminate this Agreement effective December 31, 2005 without liability to the non-terminating Party. Provided, however, that if such approvals are received after October 31, 2004, but prior to either Party's exercise of its above right to terminate, the above right to terminate shall lapse. The survival provision of Section 12.2 (including the licenses set forth in Sections 8.9 – 8.12, subject to the payments set forth in Sections 5.8 and 5.9) shall apply to any such termination. Process Development Projects shall be conducted primarily at the ASTC. In addition to the ASTC, IBM may utilize other IBM facilities to conduct elements of the development work

associated with the Process Development Projects. In addition, the Parties may mutually agree to utilize AMD development facilities for specifically defined elements of the Process Development Projects. If the Management Committee members so agree, such agreement shall be documented in writing and signed by the Parties.

SECTION 3 - SCOPE OF PROCESS DEVELOPMENT PROJECTS

- 3.1 The Parties agree to jointly develop semiconductor manufacturing process technology based on IBM's "S" high performance technology roadmap on commercially available SOI Wafers that meet the requirements set forth as "Strategic Technology Objectives" in Exhibit A (hereinafter referred to as "Strategic Technology Objectives") in accordance with the schedule set forth in Exhibit B (hereinafter referred to as "Development Schedule"). The Parties agree that the process technology so developed, shall be high performance, leading edge technology and, to the extent consistent with the Strategic Technology Objectives, shall be cost efficient. Any modification to such Strategic Technology Objectives or Development Schedule requires the mutual agreement of the Parties. For the avoidance of doubt, none of the Process Development Projects shall include the development of i) Proprietary Tools, ii) Packaging Technology, iii) Mask Fabrication and Photoresist Technology, iv) Memory, v) SiGe Technology, or vi) Chip Designs.
- 3.2 The Parties agree that Exhibit A also sets forth the potential technology implementation options for each Process Development Project. The Parties shall work together to evaluate the various options available, including individual process module feasibility, integration, characterization and qualification. The goal of such evaluation is to agree on an integrated process technology that meets the Strategic Technology Objectives. If the Project Leaders are unable to agree on a particular process module to be developed, or should they disagree as to continued development of a process module that was previously selected, the process module preferred by IBM shall be pursued in the applicable Process Development Project.
- 3.3 For information other than that developed by the Parties in a given Process Development Project to be considered Specific Results for that Project, including Background Know-How, it must be either deliberately provided to the Process Development Projects by the owner of such information, or be evaluated by the Project Leaders, pursuant to Section 3.2, for possible use in a Process Development Project. In the event such item of information is provided, and the Party owning such information notifies the Project Leaders within thirty (30) days after such owning Party's disclosure or the initiation of such evaluation that such information should be withdrawn, such owning Party may withdraw such information from use in the Process Development Projects and all such information in tangible form associated therewith shall be returned to such owning Party and such tangible information shall not become Specific Results. In the event of such withdrawal, any non-tangible information related to such information retained in the minds of the non-owning Party's employees shall be treated as Specific Results by the non-owning Parties. Absent such notice and withdrawal within thirty (30) days, all information deliberately provided by the owner of such information or evaluated by the Project Leaders shall be treated as Specific Results.

3.3.1 Any issue as to whether information was deliberately provided to the Process Development Projects shall be resolved by the Project Leaders based on either of the following criteria:

3.3.1.1 whether the information was deliberately exposed to the other Parties by a Representative of the owner of such information; or

3.3.1.2 whether the evaluation of the information by the Representatives was validly considered for incorporation into the Process Development Projects.

If the Project Leaders cannot agree, such issue shall be resolved by the Management Committee in accordance with the criteria in Sections 3.3.1.1 and 3.3.1.2.

3.3.2 Each Party shall be responsible for instructing its Representatives on methods of proper introduction of information into the Process Development Projects, and the consequences under Section 7.10, below, of information that is inadvertently obtained.

3.4 During a given Process Development Project, the IBM Project Leader shall designate elements of the Specific Results and Background Know-How thereof that IBM will be applying toward development of its applicable Bulk CMOS process. IBM shall provide an initial designation of such elements at the completion of its initial feasibility studies for the applicable Process Development Project (set forth in Exhibit B as the "T-Bulk date"), and IBM shall provide a final designation of such elements no later than the "T1" date for the applicable Process Development Project, as set forth in Exhibit B. AMD agrees that IBM reserves the right to change such designations between its initial designation and its final designation. In either case, prior to making such determinations IBM shall consult with AMD, who shall provide its input as to the applicability of such elements to a Bulk CMOS process; provided, however, that IBM shall have the right to make any and all final decisions as to designation and application of such elements to its Bulk CMOS process. The Project Leaders shall agree upon a specific process by which IBM will make this designation and by which IBM will address any requests for clarification by AMD within reasonable time periods.

3.5 Each Party shall have access to all Specific Results and shall be solely responsible, including the cost therefor, for the transfer of Specific Results to its own facilities. In addition to Representatives, AMD may assign additional personnel to IBM facilities to assist with such transfer. The number of additional personnel and the duration of their assignment shall be mutually agreed to by the Management Coordinators. As part of each Process Development Project, the Project Leaders shall coordinate the completion of the Documentation for such Process Development Project and each Party shall have access to all such Documentation. Notwithstanding the foregoing, subsequent to IBM establishing

the Strategic Technology Objectives (the end of Pre-T0) for CMOS13S, only a subset of the Documentation shall be prepared for the CMOS 13S Process Development Project, as determined by the Project Leaders. Should AMD have any questions regarding the Documentation as they are transferring such Specific Results to their own facilities, IBM agrees to provide reasonable telephonic, videoconference or email support through its Technical Coordinator to address such questions during normal business hours. Each Party shall be solely responsible for obtaining any and all regulatory approvals as may be required to utilize Specific Results at its facilities, and shall be solely responsible for the cost of equipment and consumables as may be required to utilize the Specific Results at its facilities.

- 3.6 Without liability to the other Parties for breach hereof, to the extent known by a Party disclosing information for use in any Process Development Project, prior to such disclosure, such disclosing Party agrees to promptly notify the other Parties of any limitations on the uses of such information, whether such use would violate or whether such information is protected by any copyright or mask work or similar right of any Third Party. Upon such notification, the Parties may agree to accept such information into the Process Development Project subject to such limitations. Upon the failure to make such notification, or if any such limitation arises after disclosure by the disclosing Party, then the Parties shall attempt to work together to find a mutually agreeable solution. Each Party further agrees to use reasonable efforts to ensure that it will not design or develop the Process Development Projects in such a way that requires the use of any Third Party confidential information, which is not available to the other Parties for their use as aforesaid. Each Party further agrees to use reasonable efforts to ensure that it will not disclose to the other Parties any information considered confidential by it or by any Third Party which information does not relate to the Process Development Projects.
- 3.7 AMD will provide to the Process Development Projects AMD's most current *** as Background Know-How.

SECTION 4 - MANAGEMENT AND STAFFING OF THE PROCESS DEVELOPMENT PROJECTS

- 4.1 The Parties hereby create a Management Committee, with equal representation from each Party. The responsibilities of the Management Committee are set forth in Exhibit D, attached hereto. All decisions of the Management Committee shall be by mutual consent.
- The Management Committee is comprised initially of the following individuals:

- (i) For AMD: ***
One AMD Place
P.O. Box 3453, MS79
Sunnyvale, CA 94088-3453
Tel: ***

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(ii) For IBM: ***
2070 Route 52
Hopewell Junction, New York 12533

Tel: ***
Fax: ***

Either Party may change its member of the Management Committee by written notice to the other Party. The Management Committee will conduct regular meetings on dates and at locations determined by the Management Committee. Meetings of the Management Committee may be held in person, by teleconference or by videoconference.

- 4.1.1 The Management Committee shall establish a regular review process with the appropriate senior business executives of each of the Parties of at least the level of Vice President or other comparable level. Such review shall include review of an overall progress report to be prepared by the Project Leaders. The responsibilities of the Management Committee are set forth in Exhibit D.
- 4.1.2 Should either Party reasonably determine that the process technology to be developed under the Process Development Projects is no longer meeting the Strategic Technology Objectives or the Development Schedule, or brings forth empirical evidence of changes in the competitive marketplace for semiconductor technology such that the Strategic Technology Objectives and/or the Development Schedule are no longer competitive, such Party may present such problem to the Management Committee for discussion. If the Management Committee, after the exercise of reasonable efforts in the conduct of such discussions, fails to reach mutual agreement as to a resolution of such Party's concerns then any Party may refer such concerns to the senior executives named in Section 4.1.1, above, which senior executives shall discuss and meet in person, if necessary, in order to attempt to resolve such Party's concerns. If such senior executives are unable to resolve such Party's concern the senior executives agree to instruct the Management Committee to negotiate a mutually agreeable reasonable wind down plan (which may include additional exit fees) to terminate the development relationship set forth in this Agreement. In the event of such termination, AMD shall be entitled to immediately exercise its rights in accordance with Section 8.9 below.
- 4.2 Each Party shall appoint a Project Leader within thirty (30) days after the Effective Date. It is the intent of the Parties that Project Leaders be assigned to the Process Development Projects for no less than two (2) year terms. The IBM Project Leader shall be in charge of the day- to-day operations of the Process Development Projects. A Party may replace its Project Leader, named below, by giving written notice to the other Party of such replacement. The responsibilities of the Project Leaders are set forth in Exhibit E.

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The Project Leaders shall be:

(i) For AMD: ***
2070 Route 52
Hopewell Junction, New York 12533

Tel: ***
Fax: ***

(ii) For IBM: ***
2070 Route 52
Hopewell Junction, New York 12533

Tel: ***
Fax: ***

4.3 In addition to the Project Leaders, AMD will provide Representatives to work on the Process Development Projects at the ASTC. Exhibit C, attached hereto, shows the minimum staffing and professional skill levels expected for such Representatives. If IBM so requests, AMD shall make a compensating payment to IBM at a rate of *** (\$***) U.S. Dollars per person month for each headcount below the minimum staffing level set forth in Exhibit C. AMD may, at its sole option, provide up to *** (***) Representatives to work in the ASTC. The assignment of such Representatives shall be mutually agreed to by the Project Leaders

It is the intent of the Parties that such Representatives be assigned to the Process Development Projects at the ASTC for no less than two (2) year terms. AMD may change the number of Representatives with a minimum of three (3) months prior written notice to the other Parties and may reassign Representatives with a minimum of one (1) month prior written notice to the other Parties.

The Parties will provide sufficient technical personnel on the Process Development Projects with the appropriate skills and experience to accomplish the Strategic Technology Objectives.

4.4 Each Party shall appoint a Technical Coordinator within thirty (30) days after the Effective Date. The Technical Coordinators shall be:

(i) For AMD: ***
2070 Route 52
Hopewell Junction, New York 12533

Tel: ***
Fax: ***

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(ii) For IBM: ***
2070 Route 52
Hopewell Junction, New York 12533

Tel: ***
Fax: ***

The Technical Coordinators shall be responsible for supervising exchanges of information among the Parties pursuant to Section 7.2, below. A Project Leader for a Party may replace the Technical Coordinator for such Party, named above, by giving written notice to the other Parties' Project Leaders of such replacement.

- 4.5 Each Party agrees that its Representatives shall comply in all material respects with all personnel, human resources, security and safety rules, procedures and guidelines of the other Party applicable to contractors resident at or visiting the premises of such Party or its Subsidiary while such Representatives are on the other Party's or its Subsidiary's premises, including those set forth in Exhibit F. In particular, AMD agrees to abide by IBM security requirements as may apply to their Representatives while at the ASTC facility. Each Party shall provide to the other in advance a set of documents setting forth all such rules, procedures and guidelines, including any updated versions thereof.
- 4.6 Each Party shall be responsible for the selection of its Representatives who will be assigned to work in the ASTC on the Process Development Projects. Personnel supplied by each Party who are Representatives of the supplying Party shall not for any purpose be considered employees or agents of any other Party. Each Party shall be responsible for the supervision, direction and control, payment of salary (including withholding of taxes), travel and living expenses (if any), worker's compensation insurance, disability benefits and the like of its own Representatives. In addition, each Party may reassign any of its Representatives as such Party deems necessary, subject to Section 4.3, above.
- 4.7 If any Party should become aware of the existence of any hazardous conditions, property, or equipment which are under the control of another Party it shall so advise the other Party; however, it shall remain that Party's responsibility to take all necessary precautions against injury to persons or damage to property from such hazards, property, or equipment until corrected by the other Party. Each Party agrees to comply with the Occupational Safety and Health Act ("OSHA"), applicable OSHA standards, applicable New York safety and health laws and regulations, any applicable municipal ordinances, and applicable facility safety rules of which the Party has notice, regarding the Representatives it assigns to the Process Development ASTC.
- 4.8 The Parties agree that the Parties and any Subsidiaries shall refrain from making any payment or gift of any value to any Representatives of any other Party assigned to the ASTC without the employing Party's prior written approval. No Party (or any of its Subsidiaries) may make any representation that might cause a Representative of another Party to believe that an employment relationship exists between such Representative and the other Party.

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- 4.9 Each Party assumes no liability to the other Parties for any injury (including death) to persons or damage to or loss of property suffered on or about the ASTC unless caused by the gross misconduct or gross negligence of such Party, its Representatives or invitees.
- 4.10 To the extent permitted by law, during the term of this Agreement, each Party agrees neither to directly or indirectly solicit for employment purposes the Representatives of any other Party engaged in semiconductor development in IBM's East Fishkill or Yorktown Research facilities or AMD's Sunnyvale, Austin or Dresden facilities or other Representatives working on the Process Development Projects until at least one (1) year has passed between the date such employee stopped being engaged in semiconductor development, and the date of solicitation, without the prior written permission of such other Party. However, the foregoing does not preclude general (i.e., non-targeted) recruitment advertising. In addition, to the extent permitted by law, during the term of this Agreement, each Party agrees that its units, divisions, line of business or other comparable organizational structures, involved in the development of semiconductor process technologies shall not hire Representatives of any other Party engaged in the Process Development Projects, without the prior written permission of such other Party.

SECTION 5 - AMD FUNDING CONTRIBUTIONS AND ROYALTY PAYMENTS

- 5.1 AMD shall pay to IBM for the Term of this Agreement for its respective share of the costs of the Process Development Projects; such payments shall be made as follows (in millions of US dollars):

	<u>1Q03</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>	<u>1Q04</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>	<u>1Q05</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>
AMD	***	***	***	***	***	***	***	***	***	***	***	***
	<u>1Q06</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>	<u>1Q07</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>	<u>1Q08</u>	<u>2Q</u>	<u>3Q</u>	<u>4Q</u>
AMD (4 total partners)	***	***	***	***	***	***	***	***	***	***	***	***
AMD (3 total partners)	***	***	***	***	***	***	***	***	***	***	***	***
AMD (2 total partners)	***	***	***	***	***	***	***	***	***	***	***	***

During 2006, 2007 and 2008, AMD will pay IBM according to the table above, where the applicable row of the table will be determined based upon the total number of partners, including IBM and AMD, participating in S Process Development in the ASTC. If the number of partners changes during the Term, then the new quarterly rate will take effect beginning in the quarter after such change in the number of partners occurs. The amounts described in this paragraph will be due in quarterly installments commencing with the first calendar quarter of 2006.

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Such payments shall be made on the fifteenth of the first month of each calendar year quarter. This Agreement will serve as an invoice for such payments.

- 5.2 AMD shall be liable for interest on any overdue payment under this Agreement commencing on the date such payment becomes due at an annual rate equal to eighteen percent (18%) per year. If such interest rate exceeds the maximum legal rate in the jurisdiction where a claim therefor is being asserted, the interest rate shall be reduced to such maximum legal rate.
- 5.3 IBM shall apply the payments of Section 5.1 above towards Process Development Project costs and not for any license rights granted by any Party to any other Party for Background Know-How. Notwithstanding Section 5.1, AMD shall be required to share the incremental costs of any changes in scope in the Process Development Projects agreed to pursuant to Section 14.
- 5.4 Moreover, AMD shall pay IBM a royalty on all ASIC Products, at the rate of *** percent (***) of the Net Selling Price of each unit of ASIC Product sold, leased or otherwise transferred directly or indirectly prior to five (5) years from ***; provided, however, that in the case of Specific Results from the *** all royalties for ASIC Products utilizing such Specific Results shall be *** percent (***)%. Such royalty payments are to be paid by AMD for each ASIC Product sold, leased or otherwise transferred at the time of such sale, lease or transfer to a Third party. For clarity, such royalty obligation does not extend to transactions between or among the Parties and such Wholly Owned Subsidiaries or Related Subsidiaries that do not involve a Third Party. AMD shall pay IBM all royalties owed within forty-five (45) days after the end of each calendar quarter. AMD shall provide a royalty report to IBM within forty-five (45) days after the end of each calendar quarter. All payments shall be made by wire transfer to the IBM account listed in Section 13.1.1 below, in U.S. dollars. The following information shall be included in the wire detail:

Company Name
Reason for Payment
License Reference No. L024381B

- 5.5 AMD shall maintain a complete, clear and accurate record of the quantity of ASIC Products sold, leased or otherwise transferred and any other relevant information to the extent it is required to determine whether they are paying the correct royalty amount hereunder. To ensure compliance with the terms and conditions of this Agreement, IBM shall have the right to audit all relevant accounting and sales books and records of AMD. The audit will be conducted by a mutually acceptable audit firm, and shall be conducted following reasonable prior written notice (at least forty-five (45) days in advance) during regular business hours at an office where such records are normally maintained and in such a manner as not to interfere with AMD's normal business activities and shall be restricted only to those records necessary to verify AMD's obligations hereunder. The audit report provided to IBM may only include the information necessary to determine

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whether or not any underpayment or overpayment exists, and if it exists, the amount of such underpayment or overpayment. IBM shall instruct the auditor to include only business information in the audit report to IBM. IBM shall use the business information reported by the auditor only for the purpose of determining royalty payments and for no other purpose. In no event shall audits be made hereunder more frequently than once in every twelve (12) months and the audit shall not cover any records from a period of time previously audited. If any audit should disclose any underpayment or overpayment, the owing Party shall within forty-five (45) days pay the difference. The cost of such audit will be borne by IBM. AMD shall be provided with a copy of the audit report within a reasonable period of time after its completion. The independent audit firm shall not be hired on a contingent fee basis and shall have confidentiality agreements in place sufficient to protect AMD's confidential information.

5.6 If AMD exercises its option under Section 8.7, below, AMD agrees to pay IBM a royalty of *** (***) percent for each SOI wafer for 65 nm technology provided to, or purchased by, *** and *** (***) percent for each SOI wafer for 45 nm technology provided to, or purchased by, a *** for the lesser of a period of four (4) years beginning on the initial date of *** of the applicable technology or the expiration of the confidentiality period for the applicable technology. If a *** is also a ***, the royalty rates will be *** (***) percent for 65 nm SOI wafers and *** (***) percent for 45 nm SOI wafers. The revenue basis for such qualified SOI wafers shall be the lesser of *** for processed SOI wafers of the respective technology generation. If AMD exercises its rights under the third paragraph of Section 8.7, then for the combined maximum capacity thereunder that IBM refuses pursuant to Section 8.7, AMD will pay IBM a royalty of *** (***) percent for each SOI wafer and *** (***) percent of each bulk wafer for 65 nm technology provided to, or purchased by, a Third Party and *** (***) percent for each SOI wafer and *** (***) percent for each bulk wafer for *** provided to, or purchased by, a Third Party and the obligation to pay this royalty will terminate the lesser of four (4) years from the initial date of *** of the applicable technology or the expiration of the confidentiality period for the applicable technology. Other than as expressly recited in this Section 5, no royalties will be due for any products. Section 5.2, the payment procedures of Section 5.4, and the audit provisions of Section 5.5 will apply to the aforementioned wafer royalty payments.

5.7 INTENTIONALLY LEFT BLANK

5.8 If AMD becomes licensed under Section 8.9, below, AMD agrees to pay IBM as follows: if IBM does not offer an extension to this Agreement that is consistent with Section 8.8, then AMD will pay IBM \$*** for each of the ***, if AMD does not request an extension to this Agreement or if the Parties fail to reach agreement on the extension, AMD will pay IBM \$*** each ***, provided however, if one of the ***, AMD will pay IBM \$***. The above amounts will be due upon disclosure to the *** and only if the date of disclosure is within the confidentiality period for the applicable technology. Section 5.2 and the payment procedures of Section 5.4 will apply to these payments.

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- 5.9 In consideration for the licenses granted by IBM to AMD pursuant to Sections 8.10, 8.11 and 8.12 of this Agreement, AMD shall pay to IBM (a) *** on or before September 17, 2004, and (b)*** on or before March 13, 2005, which obligation shall be irrevocable and which payment when made shall be non-refundable. This Agreement will serve as an invoice for such payments.
- If the payment obligation set forth in Section 5.9(a) is not made when due, then all licenses and other rights granted herein to AMD shall automatically terminate, and such termination shall be effective retroactively to the Effective Date so that such rights granted herein and obligations of each Party hereto with respect to this Section 5.9 shall be void ab initio.
- 5.10 Each Party shall bear and pay all taxes (including, without limitation, sales and value added taxes) imposed upon it by the national government or political subdivision thereof, of any country in which they are doing business as a result of the existence of this Agreement or the exercise of its rights hereunder. For clarity, IBM shall not be responsible for any taxes, duties or fees resulting from AMD's exercise of its rights under Section 8.10.
- 5.11 Except as expressly provided in this Agreement, neither Party shall be entitled to any payment, cost reimbursement, or other compensation from the other for services, deliverables and rights granted to the other Party hereunder. Each Party shall bear all its own expenses incurred in the performance of this Agreement.

SECTION 6 - INSURANCE, RESPONSIBILITY FOR RESULTS AND WARRANTIES

- 6.1 Although the Parties will use commercially reasonable efforts in performing the Process Development Projects, the Parties acknowledge that the results of the development work to be performed are uncertain and cannot be guaranteed by any Party. The risk of success or failure of the Process Development Projects shall be shared by all the Parties equally. If a Party has exerted such efforts in the performance of its responsibilities under a Process Development Project, the failure to achieve performance objectives or schedules within a Process Development Project shall not constitute a breach of this Agreement.
- 6.2 All items furnished by a Party to the Process Development Projects will be produced or provided by said Party in the same manner as it produces or provides such items for its own use and will be furnished on an "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, including, without limitation, i) ANY WARRANTY THAT THE SPECIFIC RESULTS WILL BE FREE OF THIRD PARTY CLAIMS OF INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRET, OR MASK WORK RIGHTS and ii) ANY IMPLIED WARRANTIES OR TERMS OF MERCHANTABILITY AND FITNESS OR USE FOR A PARTICULAR PURPOSE.

- 6.3 Each Party shall maintain for the benefit of each of the others, comprehensive general liability insurance of not less than fifteen million dollars (\$15,000,000) per occurrence which covers bodily injury (including death) and property damage (including, to the extent such insurance is reasonably available therefor, environmental damage), and which applies to any such liability the Party may have under this Agreement. Purchase and maintenance of such insurance shall in no way be interpreted as relieving any Party of any of its responsibilities hereunder, and each Party may carry, at its expense, such additional insurance amounts and coverage as it deems necessary. In no event shall any such insurance be cancelled without prior written notice by the insured Party's insurance carrier to the other Party.
- 6.4 IBM represents and warrants that the agreement with its Third Party development partners grants IBM the right to transfer the proprietary information of its Third Party development partners to AMD and to sublicense such information consistent with Section 8 hereof. Such sublicense is hereby granted pursuant to the terms and conditions of this Agreement. IBM agrees that prior to amending such agreement inconsistent with this representation and warranty, it shall notify AMD.

SECTION 7 - INFORMATION TRANSFERS

- 7.1 Without any liability to the other Parties for patent infringement or failure to notify, each Party agrees to promptly notify the other Party in writing or provide oral notification, as the case may be, of any patents or other intellectual property rights of Third Parties of which it becomes aware, which, in the sole opinion of said Party, may relate to the use of Specific Results. In such instance, the Parties shall reasonably cooperate with each other to exchange information related to such potential Third Party intellectual property issues. However, no Party shall have any obligation hereunder to conduct patent searches or studies in relation to the Process Development Projects or to notify the other Parties of any licenses it may have under any particular patent. The Parties recognize that each of them has patent license arrangements with Third Parties and that it is the individual responsibility of each Party to secure any rights under the patents of Third Parties which may be needed to enable it to manufacture and/or market the product (including products manufactured using the process technology to be developed under the Process Development Projects) at such time as it determines in its sole judgement that such action is required.
- 7.2 Any confidential information disclosed by one Party to another in performance of the Process Development Projects shall be designated with an appropriate and conspicuously obvious legend, such as "IBM Confidential" or "AMD Confidential", as the case may be, such legends to clearly indicate to a person viewing or otherwise accessing such information that it is of a confidential nature to the disclosing Party. Any such disclosure that is made orally shall be confirmed in writing under a like designation within thirty (30) days after the date of such disclosure. The Technical Coordinators shall monitor and keep records of all such disclosures of confidential information and shall ensure that it is properly marked as confidential, and record the date of receipt. Specific Results

generated pursuant to the Process Development Projects and any confidential information that is included in Specific Results shall be clearly designated by the Technical Coordinators with an appropriate legend, such as "IBM/AMD Confidential". Further, in the event that a Representative of any Party obtains information relating to the Process Development Projects in tangible form which is not designated as confidential in accordance with this Section 7.2, but which from its nature appears likely to be confidential, such Representative will notify the Technical Coordinators who then will decide whether or not such information can and should be thereafter treated as confidential. The Technical Coordinators shall either mutually agree that such information is non-confidential or have all copies of such information in tangible form promptly marked with the appropriate legend identifying its confidentiality.

- 7.3 Except as otherwise provided in this Agreement, with respect to Specific Results and any other confidential information of either Party, which is confidential pursuant to Section 7.2 above, the Party receiving such information shall use the same efforts to avoid its publication or dissemination to Third Parties as it employs with respect to information of its own which it does not desire to be published or disseminated. For Specific Results of each Process Development Project and Background Know-How, the obligations of confidentiality shall terminate *** for each applicable Process Development Project (if this Agreement is terminated or if for some other reason a given Process Development Project is not pursued ***, such time period shall be *** of the applicable Process Development Project); in the case of Proprietary Tools, this obligation of confidentiality shall terminate *** after its disclosure by the disclosing Party; and for all other confidential information this obligation of confidentiality shall terminate *** after its disclosure by the disclosing Party. This obligation shall not, however, apply to any information that is:
- 7.3.1 already in or comes into the possession of the receiving Party or its Subsidiaries without obligation of confidence;
 - 7.3.2 now, or hereafter becomes, publicly available without breach of this Agreement;
 - 7.3.3 intentionally disclosed to or rightfully received from Third Parties without obligation of confidence;
 - 7.3.4 independently developed by the receiving Party or its Subsidiaries;
 - 7.3.5 approved for release by written agreement of the disclosing Party; or
 - 7.3.6 inherently disclosed in the use, lease, sale or other distribution of any available product or service or publicly available supporting documentation therefor by the receiving Party or any of its Subsidiaries.
- 7.4 The receiving Party's obligations with respect to Specific Results or any other confidential information of the disclosing Party as specified in Section 7.3, above shall not apply to any disclosure that is:
- 7.4.1 in response to a valid order of a court or other governmental body of any country or group of countries or any political subdivision thereof; provided, however, that the receiving Party shall first have notified the disclosing Party and made a good faith effort to obtain a protective order requiring that the information and/or documents so disclosed be used only for the purposes for which the order was issued;

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- 7.4.2 otherwise required by law; or
 - 7.4.3 reasonably necessary in order to establish the receiving Party's rights, provided that such receiving Party shall provide the disclosing Party with prior written notice, except notice shall not be required where the receiving Party is attempting to establish rights in a lawsuit under this Agreement against the disclosing Party or is filing a patent under Section 11 of this Agreement.
- 7.5 Each Party shall have the right to disclose and sublicense as specified in Section 8 Specific Results to any of its Wholly Owned Subsidiaries and its Related Subsidiaries at any time; provided however, that such Wholly Owned Subsidiaries and its Related Subsidiaries shall agree to be bound by substantially the same terms as are applicable to said Party in Sections 7.2, 7.3, and 7.4 and the survival of same pursuant to Section 12. Further, each Party may authorize its Wholly Owned Subsidiaries and its Related Subsidiaries to whom such Party has disclosed Specific Results pursuant to this Section 7.5 to exercise some or all of its rights to disclose Specific Results under and in accordance with Section 7.6.
- 7.6 Subject to provisions of this Section 7.6, AMD shall have the right to disclose the following portions of the Specific Results to Third Parties, but solely for the purpose of enabling such party to assist AMD, in exercising the rights granted to it hereunder:
- 7.6.1 specifications for masks, materials, chemicals, consumables and/or equipment to contractors or suppliers;
 - 7.6.2 wafers and/or information to have equipment maintained; or
 - 7.6.3 equipment lists and simple process flow information, excluding detailed process flow information or detailed process specifications, as necessary in order to enable installation of a process in a fabrication facility or to design and construct a facility to practice such process.

Such disclosures will not be made without a written agreement between the disclosing party and the recipient. Such agreements shall be subject to the following:

- (a) such agreements must obligate the recipient to utilize the disclosed information solely for the benefit of the discloser and for no other purpose, and solely in furtherance of the purposes set forth in this Section 7.6;

(b) such disclosures shall be subject to confidentiality terms that are the same or substantially similar to those set forth in this Agreement, and at a minimum must have a confidentiality term that is no shorter than that set forth herein; and

(c) the disclosing Party shall use reasonable efforts to negotiate a provision in the agreement whereby IBM would be granted third party beneficiary status (or the equivalent under whatever law applies to the agreement), to the extent permitted by law, with an independent right to enforce the confidentiality and license provisions of the agreement.

For the avoidance of doubt, AMD shall have the right under this Section 7.6 to disclose portions of Specific Results as may be incorporated into a Derivative Process as set forth in Sections 7.7 and 8.1, for the same purposes and subject to the same limitations as set forth herein.

Moreover, AMD shall have the right to disclose those portions of Specific Results listed below to their customers, solely for the purpose of enabling sales of Integrated Circuits embodying the Specific Results to such customers. Such portions shall include the following:

- Process roadmap and development schedule for Process Development Projects;
- Time schedule for development of device model library, and SPICE parameters;
- Design rules for each Process Development Project; and
- Simplified process flow (indicative of rough number of process and mask steps).

Such disclosures will not be made without a written agreement between the disclosing party and the recipient that, at a minimum, shall have a term of confidentiality no shorter than that set forth herein, and that limit such recipient's use of such information to the purposes set forth herein.

7.7 As set forth in Section 8.1, AMD has the right to utilize one or more aspects of Bulk CMOS Information in their development of the Derivative Process. AMD shall have the right to disclose and sublicense as specified in Section 8 such Derivative Processes to its Wholly Owned Subsidiaries and their Related Subsidiaries at any time (such disclosures being subject to the conditions set forth in Section 7.5). AMD shall also have the right to disclose and sublicense as specified in Section 8 such Derivative Processes to Third Parties, as follows:

- (i) to not more than *** (***) Third Parties in total under this Agreement subject to Section 7.7(ii), *** (***) *** of the applicable Process Development Project and to AMD's flash memory venture for the purpose of producing flash memory products, no earlier than *** of the applicable Process Development Project. It is understood that employees of AMD's flash memory partner working within AMD's flash memory venture might be exposed to such disclosed information and such exposure shall not constitute a disclosure under this Section nor a breach of any confidentiality obligations hereunder; and

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(ii) to an *** of ***, no earlier than *** of the applicable Process Development Project

Such sublicenses will not be granted without a written agreement between the disclosing party and the sublicensee. Such sublicenses and sublicense agreements shall be subject to the following:

- (a) such sublicenses must be for the entire Derivative Process, and not solely or primarily those portions of the Derivative Process derived from the Specific Results;
- (b) such sublicenses shall specifically exclude the right for the Third Party to utilize all or any aspect of the Derivative Process to develop, derive, or otherwise create a fabrication process to fabricate SOI Integrated Circuits;
- (c) such sublicenses shall be subject to confidentiality terms that are the same or substantially similar to those set forth in this Agreement, and at a minimum must have a confidentiality term that is no less than that set forth herein;
- (d) such sublicense shall terminate, with immediate effect if the Third Party undergoes any of the following:
 - becomes insolvent, is dissolved or liquidated, files or has filed against it a petition in bankruptcy, reorganization, dissolution or liquidation or similar action filed by or against it, is adjudicated as bankrupt, or has a receiver appointed for its business;
 - has all or a substantial portion of its capital stock or assets expropriated or attached by any government entity; or
 - with the exception of AMD's flash memory venture, undergoes a Change of Control (as such term is defined in Section 12.3 of this Agreement, as modified to apply to such sublicensee instead of AMD); and
- (e) to the extent permitted by law, such agreement shall grant IBM third party beneficiary status (or the equivalent under whatever law applies to the sublicense agreement) with an independent right to enforce the confidentiality and license term of the agreement. If AMD fails to reach an agreement with its disclosee(s) on such third party beneficiary status, then IBM shall discuss and negotiate with AMD for a possible alternative to this sub-section (e).

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7.8 Notwithstanding any other provision of this Agreement, AMD shall not be prevented from furnishing or disclosing technical information developed solely by AMD, or by AMD and Third Parties (other than Toshiba and Sony) to any Third Party. Further, with respect to technical information developed by AMD and Sony or Toshiba outside the scope of this Agreement (deemed for the purpose of this sentence to include the scope of the Sony, Toshiba, IBM "S" Process Development Agreement) AMD shall not be prevented from furnishing or disclosing such technical information to any Third Party. Further, disclosure of such technical information shall not be prevented even if a minor portion of Bulk CMOS Information embodied in Specific Results is commingled with and constitutes an inseparable element of such technical information. If any dispute arises with regard to the definition of "minor portion" prior to disclosure, the Management Committee shall resolve such dispute. No royalties shall be payable in connection with the disclosures permitted by this Section 7.8.

In addition, AMD may request permission in writing from IBM to disclose Specific Results, in addition to that set forth in Sections 7.5, 7.6 and 7.7 to Third Parties. IBM will consider and respond in writing to each such request.

7.9 IBM shall have the right to disclose Specific Results to any Subsidiary or any Third Party, at any time and for any purpose, and such recipients shall have the right to disclose Specific Results to their Subsidiaries, provided that such disclosures shall be subject to appropriate confidentiality terms that, at a minimum, shall have a term of confidentiality no shorter than that set forth herein.

7.10 With respect to information that does not relate to the Process Development Projects and which is considered confidential by either Party, it is not the intention of either Party to disclose to or obtain from the other Party any such information. In particular, the Parties acknowledge that IBM has other development projects and relationships being conducted in the ASTC facility, and the Parties shall take reasonable precautions to limit the disclosure and receipt of information unrelated to Process Development Projects. In the event that a Representative of one Party obtains any such information of the other Party that is designated as confidential or which should from its nature be understood to be confidential, the Technical Coordinators of both Parties shall be informed, and any such information in tangible form shall promptly be returned to said originating Party. Nothing in this Agreement shall convey any right to said Party to use said tangible information for any purpose. However, any non-tangible information related to said information which is retained in the minds of the Party's employees will be treated as Specific Results.

SECTION 8 – LICENSES TO BACKGROUND KNOW-HOW

8.1 IBM hereby grants to AMD, and AMD hereby grants to IBM, under their respective trade secret/know-how rights in and to Background Know-How that becomes part of Specific Results pursuant to Section 3, a non-exclusive, perpetual, worldwide, irrevocable (subject to all the terms and conditions of this Agreement) license, to use such Background

Know-How for the purpose of researching, developing, engineering, manufacturing, using, marketing, selling, servicing and otherwise disposing of (i) SOI Integrated Circuits other than ***, (ii) Integrated Circuits that combine Bulk CMOS and SOI Device Information other than ***, or (iii) Bulk CMOS products other than ***. AMD shall have no obligation under this Agreement to pay any royalty for the licenses set forth in this Section 8, except as provided in Section 5 above.

The foregoing license shall include the right for AMD to utilize one or more aspects of Bulk CMOS Information for the development and qualification of their own, proprietary Bulk CMOS process ("Derivative Process") and for developing, engineering, manufacturing, using, marketing, selling, servicing and otherwise disposing of Integrated Circuits other than SOI Integrated Circuits utilizing such Derivative Process, such Integrated Circuits being designed by any party. It is expressly confirmed that such license shall include the right for AMD to develop a Derivative Process.

- 8.2 IBM hereby grants to AMD, and AMD hereby grants to IBM, under their respective copyright rights in and to Background Know-How that becomes part of Specific Results pursuant to Section 3, a non-exclusive, perpetual, worldwide, irrevocable (subject to all the terms and conditions of this Agreement) license to copy documentation and other written expression, to make derivative works of such written expression, to distribute such documentation and derivatives as set forth elsewhere in this Section 8, and to execute, display, and perform to the extent consistent with the provisions of Section 7; provided however, that AMD shall make only such numbers of copies and create such derivative works as are reasonably necessary for them to carry out the license rights set forth in Sections 8.1, 8.5, 8.7, 8.8 and 8.9.
- 8.3 IBM hereby grants to AMD, and AMD hereby grants to IBM, under their respective mask work rights in and to Background Know-How that becomes part of Specific Results pursuant to Section 3, a non-exclusive, perpetual, worldwide, irrevocable (subject to all the terms and conditions of this Agreement) license to use any process-related mask design information provided to a Process Development Project (e.g. kerf test structures) and create derivative works thereof, as reasonably necessary for the licensed Parties to carry out the license rights set forth in Section 8.1. Unless otherwise authorized, this right shall not include any rights to utilize any product design information in such masks.
- 8.4 AMD hereby grants to IBM, under AMD's trade secret and know how rights in and to Background Know-How that becomes part of Specific Results pursuant to Section 3, a non-exclusive, perpetual, worldwide, fully paid-up, and irrevocable (subject to all the terms and conditions of this Agreement), license to use such Background Know-How for the purpose of researching, developing, engineering, manufacturing, using, marketing, selling, servicing and otherwise disposing of Integrated Circuits, and to make derivatives of such information for such uses. In the case of copyrights, such license is to copy documentation and other written expression, to make derivative works of such written expression, to distribute such documentation and derivatives, and execute, display, and perform to the extent consistent with the provisions of Section 7; provided however, that IBM shall make only such numbers of copies and create such derivative works as are

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reasonably necessary for it to carry out the license rights set forth herein. In the case of mask work rights, such license is to use any process-related mask design information provided to a Process Development Project (e.g. kerf test structures) and create derivative works thereof, as reasonably necessary for IBM to carry out the license rights set forth herein. Unless otherwise authorized, this right shall not include any rights to utilize any product design information in such masks. The foregoing rights include the right for IBM to use such information and materials at facilities it solely owns, with the right to also utilize such information and materials (subject to the foregoing restrictions) at facilities of Subsidiaries to whom such information and materials have been disclosed pursuant to Sections 7.9 and 8.5.

- 8.5 The licenses granted in Sections 8.1 through 8.4 shall include the right for each Party to sublicense consistent with their respective disclosure rights as set forth in Section 7, subject to the terms and conditions set forth therein and as may be applicable pursuant to this Section 8. Each Party agrees to not unreasonably withhold the granting, upon request by a recipient to whom disclosure has been made pursuant to Sections 7.5, 7.7, and 7.9, of a non-exclusive license under such Party's patents, under reasonable and non-discriminatory terms and conditions, to the extent necessary for such recipient to utilize the disclosed information for the purposes set forth in the applicable clause of Section 7, provided such recipient otherwise respects the intellectual property rights of the granting Party.
- 8.6 No license or other right is granted herein by any Party to the other Party, directly or indirectly, by implication, estoppel or otherwise, with respect to any trade secrets, know-how, copyrights, mask works, patents, patent applications, utility models, or design patents except as expressly set forth in this Agreement, and no such license or other right shall arise from the consummation of this Agreement or from any acts, statements or dealings leading to such consummation. The Parties expressly understand and acknowledge that any patent license rights that may be required to carry out the licenses set forth in this Agreement are set forth in separate patent cross-license agreements between them.
- 8.7 After September 30, 2003, AMD may exercise the sublicensing option in this Section 8.7.

IBM hereby grants to AMD the right to disclose and sublicense the process technology developed by IBM and AMD under this Agreement including SOI Device Information and Bulk CMOS Information subject to the following requirements. AMD may sublicense no more than *** with a combined maximum of *** wafers per month for 65 nm and 45 nm technology consumed by, or supplied to the ***. Said combined maximum volume amount for a specific technology will apply until the confidentiality period for that specific technology expires. AMD must own greater than *** (defined in the same manner as for Subsidiary except for the ownership percentage) *** and the *** own the *** except for ***. The *** will derive no more than *** percent of its total revenue from ***. The *** will not be based in *** (which for purposes of this Section 8.7 *** does not include ***). The *** will not have the right to use the licensed technology to provide ***. The *** will not have the right to use the licensed technology other than ***. The *** will not be *** any sooner than *** after the later termination of either the ***. The *** will not be located in ***.

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If AMD builds a 65 nm or 45 nm manufacturing facility for the purpose of exercising AMD's rights and performing AMD's obligations under the immediately preceding paragraph of this Section 8.7 and AMD and *** cannot utilize all of the combined maximum capacity of *** wafers per month, then six (6) months prior to start of installation of 65 nm and 45 nm technology for volume production for any unutilized combined maximum capacity, and yearly thereafter for any uncontracted, unutilized combined maximum capacity, AMD will so notify IBM in writing, and IBM will have the right of first refusal of the unutilized combined maximum capacity at a price to IBM of the then current average market price for such wafers *** (***) percent, but in no event will *** under substantially similar terms and conditions. For the capacity that IBM refuses, AMD may sell *** including *** subject to this Section 8.7 to Third Parties (other than those that are not permitted to be a ***) provided AMD pays the royalty specified in Section 5.6. The foregoing notification obligation will cease when the royalty payment obligation for a technology expires.

8.8 IBM and AMD will meet on or before June 30, 2007 to discuss the possibility of continuing "S" Process development for the period beginning upon the expiration of this Agreement and ending no later than Dec 31, 2011 ("Extension Period"). The exact Strategic Technology Objectives for Process Development Projects during the Extension Period will be negotiated by IBM and AMD with the goal of industry leading performance. IBM will attempt to recruit a third and fourth partner for participation in "S" Process development during the term of the Extension Period and AMD will assist IBM in these recruitment efforts and will be flexible in altering the terms and conditions of the "S" Process development to accommodate such third and fourth partners, provided however, the third or fourth partner is not Intel and the Strategic Technology Objectives still seek industry leading performance.

8.9 If IBM and AMD do not reach agreement by December 31, 2007 to an extension of this Agreement beyond December 31, 2008, then IBM will grant AMD the license and sublicense rights in this Section 8.9 effective as of January 1, 2009. (See Section 5.8 for payment terms)

IBM hereby grants to AMD a license to the process technology developed by IBM and AMD under this Agreement including SOI Device Information and Bulk CMOS Information to complete development of the 45 nm technology and develop SOI process technology below 45 nm. The license includes the right to sublicense no more than *** wherein AMD contributes at least *** and the right for AMD and the *** to use and disclose the 45 nm technology and below to Wholly Owned Subsidiaries. The *** will derive no more than *** percent of its total revenue from ***. The *** will not be based in *** (which for purposes of this Section 8.9 *** does not include ***). The *** will not have the right to use the licensed technology to provide ***. The *** will not be *** no sooner than *** after termination of either the ***. The *** will not be located in ***.

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- 8.10 Notwithstanding any provisions to the contrary in this Agreement, IBM hereby grants to AMD a nonexclusive, nontransferable worldwide, fully paid-up (on receipt by IBM of both payments set forth in Section 5.9), royalty-free, irrevocable and perpetual (except if terminated pursuant to Section 12.5) right and license under all copyrights, trade secrets and know-how, owned or licensable by IBM, contained in the IBM Background Know-How and Specific Results to have Licensed Products manufactured at *** for AMD in a 90 and/or a 65 nanometer semiconductor manufacturing process. For clarity, the license grant in this Section 8.10 shall include the right of AMD to disclose IBM Background Know-How and Specific Results, received by or available to AMD under this Agreement prior to September 30, 2004, to ***, to the extent needed to exercise the license granted herein, provided *** agrees to be bound by substantially the same confidentiality terms as are applicable to AMD in Sections 7.2, 7.3 and 7.4. For the avoidance of doubt, the license grant in this Section 8.10 shall not relieve AMD of its royalty obligations for ASIC Products under Section 5.4.
- 8.11 Notwithstanding any provisions to the contrary in this Agreement, the licenses granted to AMD in Section 8.10 shall include the right of AMD to sublicense AMD Wholly Owned Subsidiaries. Each sublicensed Wholly Owned Subsidiary shall be bound by the terms and conditions of this Agreement as if it were named in place of AMD. Any sublicense granted to a Wholly Owned Subsidiary shall automatically terminate on the date each such Wholly Owned Subsidiary ceases to be a Wholly Owned Subsidiary of AMD, unless such cessation occurs after December 31, 2012.
- 8.12 Notwithstanding any provisions to the contrary in this Agreement, IBM shall grant to a ***-AMD Manufacturing Facility designated by AMD, a nonexclusive, nontransferable, worldwide, fully paid-up (upon completion of the payments set forth in Section 5.9), royalty-free, irrevocable and perpetual (except if terminated pursuant to Section 12.5) right and license under all copyrights, trade secrets and know-how, owned or licensable by IBM, contained in the IBM Background Know-How and Specific Results to make Licensed Products, in a 90 and/or a 65 nanometer semiconductor manufacturing process for sale only to AMD and AMD Wholly Owned Subsidiaries. For clarity, the license grant in this Section 8.12 shall include the right of AMD to disclose IBM Background Know-How and Specific Results, received by or available to AMD under this Agreement prior to September 30, 2004, to the ***-AMD Manufacturing Facility, to the extent needed to exercise the license granted herein, provided the ***-AMD Manufacturing Facility agrees to be bound by substantially the same confidentiality terms as are applicable to AMD in Sections 7.2, 7.3 and 7.4. For the avoidance of doubt, the license grant in this Section 8.12 shall not relieve AMD of its royalty obligations for ASIC Products under Section 5.4.
- 8.13 Pursuant to the patent cross license agreement entered into between IBM and AMD with an effective date of January 1, 1997, each Party has granted certain licenses to the other under its patents based on patent applications filed prior to July 1, 2005, as more fully described in that patent cross license agreement. IBM and AMD acknowledge and agree that the licenses granted in this Section 8 of this Agreement do not include licenses under the patents of either Party.

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- 8.14 IBM shall not be responsible to AMD for the quality of Licensed Products manufactured by *** or the ***-AMD Manufacturing Facility for AMD.
- 8.15 All information materials provided by AMD to *** pursuant to Section 8.10 and 8.11 of this Agreement shall be furnished "as is." IBM MAKES NO WARRANTY AS TO THIS INFORMATION OR MATERIALS, OR AS TO THE RESULTS TO BE ATTAINED BY *** OR THE ***-AMD MANUFACTURING FACILITY FROM THE USE OF THE INFORMATION OR MATERIALS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. IBM makes no representations or warranty that the use of the foregoing information or materials is sufficient for *** or the ***-AMD Manufacturing Facility to develop or manufacture any product or for anything else.
- 8.16 Neither Party makes any representation or warranty, express or implied, or assumes any liability, with respect to the infringement of patents or other rights of third parties which may arise out of the use of any of the information or materials furnished to *** or the ***-AMD Manufacturing Facility by AMD hereunder, or due to AMD's operation under the licenses granted in Sections 8.10 and 8.11, notwithstanding that a Party may be or may become licensed under the patents or other rights of third parties relating to inventions which may or may not be practiced in the information or materials furnished by AMD to *** or the ***-AMD Manufacturing Facility. Each Party understands that no license or other right is extended to it or to its customers or to *** under any such third party patents or other intellectual property rights.

SECTION 9 - LICENSE TO RESIDUALS AND PROPRIETARY TOOLS

- 9.1 Notwithstanding any other provisions of this Agreement, to the extent that such use does not infringe the valid patents, patent applications, registered designs, or copyrights of the other Party, and subject to the provisions of Section 7, each Party shall be free to use the residuals of Specific Results, the other Party's Background Know-How, and Proprietary Tools, if any, and other confidential information received pursuant to Section 7.2, above, for any purpose, including use in the development, manufacture, marketing, and maintenance of any products and services. The term "residuals" means that information in non-tangible form which may be mentally retained by those Representatives of a Party who have had access to Specific Results or the Background Know-How and Proprietary Tools, if any, of the other Party, pursuant to this Agreement. The Parties agree that the receipt of Specific Results, the Background Know-How, or the Proprietary Tools, if any, of another Party shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of a Party's Representatives within that Party.
- 9.2 Each Party grants to the other Party under the Proprietary Tools provided by that Party for use in the Process Development Projects, an irrevocable, non-exclusive and royalty-

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free license to use, execute, display, and perform such Proprietary Tools in the ASTC for the purpose of the Process Development Projects. Any Proprietary Tools that are introduced into the ASTC for the purpose of the Process Development Projects may not be transferred from the ASTC or used by a Party outside the ASTC without the express written consent of the Party introducing the Proprietary Tool(s). Any Party providing Proprietary Tools used in the Process Development Projects that are not available from another source or for which there is no reasonable substitute, will, to the extent it has the right to do so, and on terms and conditions (including reasonable fees) to be negotiated, grant a non-exclusive license to the other Party to use such Proprietary Tools outside the Process Development Projects in furtherance of their respective license rights set forth in Section 8.

SECTION 10 – OWNERSHIP OF SPECIFIC RESULTS

- 10.1 Except with respect to Designated Inventions, as set forth in Section 11 of this Agreement, and except with respect to Background Know-How, Specific Results shall be the property of both Parties which shall own the mask works, copyright, trade secret, know-how and similar rights in all such material jointly without accounting to the other Party. For the avoidance of doubt, such joint ownership shall include Inventions other than Designated Inventions. Moreover, for the avoidance of doubt, this Agreement shall constitute written consent of such joint owner for the disclosing Party to make the disclosures set forth in Section 7, to the extent such joint consent is required in a given jurisdiction; provided, however, that such assent is subject to the terms and conditions of this Agreement. Before applying to register or record in any country any of the rights or material to which this Section 10 relates, the Parties shall hold consultations and agree on whether this is appropriate and, if so, which of them shall make such application and in which countries.
- 10.2 The joint ownership by the Parties of all copyright and similar right in and to Specific Results shall be subject to Sections 7 and 8; the Parties understand and agree that their status as joint owners does not grant them any rights to utilize Specific Results over and above their respective disclosure rights as set forth in Section 7 of this Agreement.

SECTION 11 - OWNERSHIP OF DESIGNATED INVENTIONS

- 11.1 Each Designated Invention made solely by one or more Representatives or contractors of one Party, and title to all patent applications filed thereon and all patents issued thereon, shall be solely the property of the inventing Party, subject to a patent license granted in Section 11.3 below. It shall be in the sole discretion of the inventing party to determine whether or not to file a patent application on an Invention, thereby creating a Designated Invention.
- 11.2 Designated Inventions made jointly by one or more Representatives or contractors of one Party with one or more Representatives or contractors of any other Party, and title to all

patent applications filed thereon and all patents issued thereon, shall be jointly owned by the inventing Parties. Each inventing Party shall have the right to grant licenses (including the right of any licensee to grant sublicenses) to the inventing Party's Subsidiaries and/or to Third Parties under any patent issued on such a joint Designated Invention without compensation to the other inventing Party and/or its or their Representatives or contractors, which hereby give any necessary consent for granting such licenses as may be required by the law of any country. All expenses, other than internal patent department expenses of the Parties, incurred in obtaining and maintaining such patents shall be equally shared by the inventing Parties (except as provided hereinafter). Prior to filing any patent application in respect of any such joint Designated Inventions the inventing Parties shall hold consultations and agree on whether this is appropriate and, if so, which of them shall file and prosecute such application and in which countries corresponding applications shall be filed and by whom. With respect to any joint Designated Invention, where one inventing Party elects not to seek or maintain such protection thereon in any particular country or not to share equally in the expenses thereof, the other inventing Party shall have the right to seek or maintain such protection in said country at its or their own expense and shall have full control over the prosecution and maintenance thereof even though title to any patent issued thereon shall be joint.

- 11.3 With respect to Designated Inventions under Sections 11.1, the owning Party hereby grants the other Party the same rights and obligations with respect to the relevant Specific Results provided for in this Agreement to carry out the activities set forth in this Agreement (including, but not limited to, Sections 7, 8 and 9). With respect to patents issued on said Designated Inventions, the license granted by the owning Party to the other Party shall be an irrevocable (subject to the terms and conditions of this Agreement), worldwide, non-exclusive, royalty-free, paid-up license to make, have made, use, lease, sell, offer to sell, import and otherwise transfer any products and to practice and have practiced any process and shall include the right of such licensed Party to sublicense its Subsidiaries of the same or within the scope of the foregoing license.
- 11.4 Each Party shall give the other Party all reasonable assistance in connection with the preparation or prosecution of any patent application filed by said other Party and shall cause to be executed all assignments and other instruments and documents as said other Party may consider necessary or appropriate to carry out the intent of this Section 11.
- 11.5 Nothing in this Agreement shall affect any patent license agreements between the Parties currently existing, but may confer rights on one or more Parties in addition to the rights they may have under such existing agreements.
- 11.6 To the extent that a license grant under Sections 9 and 11 recites the right to make any product, apparatus and/or material, or practice any method or process in the manufacture of same, such grant shall not be construed as conveying the right to a Party or other entity to "have made" such product apparatus and/or material, or "have practiced" any such method or process, unless such right is expressly recited therein.

- 11.7 The Project Leaders shall establish a procedure for reviewing Invention disclosures in order to determine which Inventions are subject to the provisions of Section 11.2 of this Agreement relating to joint Inventions.

SECTION 12 - TERM AND TERMINATION

- 12.1 This Agreement shall be in effect from the Effective Date and, unless previously terminated as hereinafter set forth, shall remain in force until December 31, 2008. The term of this Agreement may be extended by the mutual agreement of the Parties. Notwithstanding the foregoing, if the *** slips beyond the expiration date of this Agreement, this Agreement shall be extended for an additional three (3) month period without additional development payments pursuant to Section 5.1. All other terms and conditions of the Agreement will remain in effect during such three (3) month period. If such slippage is greater than three (3) months this Agreement may be extended for additional three (3) month periods by mutual agreement of the Parties; however, AMD shall pay an additional *** dollars (\$***) each per quarter for any such extensions.
- 12.2 At expiration of this Agreement, Sections 1; 4.9; 5.2, 5.4 – 5.11 inclusive; 6; 7.1, 7.3-7.10 inclusive; 8; 9; 10; 11; 12; 13; 16; 17 and 18 shall survive and continue after the date of such expiration and shall bind the Parties and their legal representatives, successors and assigns.
- 12.3 Either Party shall have the right to immediately terminate this Agreement as to a breaching Party (as defined herein) by giving written notice of termination to the other Party if the other Party (the “breaching Party”) 1) permanently ceases doing business; 2) is adjudged bankrupt or insolvent or files a petition for bankruptcy; 3) goes into liquidation; or 4) undergoes a Change of Control.

A “Change of Control” shall be deemed to have occurred if (a) there shall be consummated (i) any consolidation or merger of a Party in which such Party is not the continuing or surviving corporation, or pursuant to which shares of such Party’s common stock would be converted into cash, securities or other property, other than a merger of such Party in which the holders of such Party’s common stock immediately prior to the merger have substantially the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (ii) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all the assets of such Party, or (b) the stockholders of a Party shall approve any plan or proposal for the liquidation or dissolution of such Party, or (c) any person (as such term is used in section 13(d) and 14(d) (2) of the Securities Exchange Act of 1934 (the Exchange Act”) other than a Party or any employee benefit plans sponsored by such Party, shall become the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the company representing: (i) more than one third of voting securities having the voting power of such Party’s then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to

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vote in the election of directors, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases, or otherwise, only if such person and its Subsidiaries exceeded ten billion US dollars in revenue from the sale of microprocessor Semiconductor Products in calendar year 2001; or (ii) fifty percent (50%) or more of voting securities having the voting power of such Party's then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases, or otherwise.

- 12.4 If either Party to this Agreement fails to perform or violates any material obligation of this Agreement, then, upon thirty (30) days written notice to the breaching Party specifying such failure or violation (the "Default Notice"), the non-breaching Party may terminate this Agreement as to the breaching Party, without liability, unless:
- The failure or violation specified in the Default Notice has been cured within a thirty (30) day period; or
- The failure or violation reasonably requires more than thirty (30) days to correct (specifically excluding any failure to pay money), and the breaching Party has begun substantial corrective action to remedy the failure or violation within such thirty (30) day period and diligently pursues such action, in which event, termination shall not be effective unless ninety (90) days has expired from the date of the Default Notice without such corrective action being completed and the failure or violation remedied.
- 12.5 Notwithstanding any provision to the contrary elsewhere in this Agreement, the non-breaching Party shall have the right to terminate all licenses and disclosure rights granted to the breaching Party pursuant to Sections 7, 8, 9, 10 and 11. If such licenses are terminated, the breaching Party shall immediately return to the non-breaching Party, or destroy, any documentation or materials embodying Specific Results and/or Background Know-How, and such return or destruction shall be certified to the non-breaching Party, in writing, by an officer of the breaching Party. Notwithstanding any such termination of licenses and disclosure rights to the breaching Party, the rights granted by the breaching Party to the non-breaching Party shall survive and remain in full force and effect. In addition, the breaching Party shall continue to be bound by the limitations and obligations set forth in Sections: 1; 4.9 and 4.10; 5; 6; 7.1, 7.3, 7.4; 8.6; 9.2; 12; 13; 16; 17; and 18.

SECTION 13 - FUNDS TRANSFER, NOTICES AND OTHER COMMUNICATIONS

- 13.1 Any notice or other communication required or permitted to be given to either Party pursuant to this Agreement shall be sent to such Party by facsimile or by registered airmail, postage prepaid, addressed to it at its address set forth below, or to such other address as it may designate by written notice given to the other Party. All payments due hereunder to IBM shall be made to IBM by telegraphic transfer or other equally expeditious means and IBM shall notify the other Party within thirty (30) days of the date

of this Agreement of the account and other details needed by the other Party in order to effect such transfer. Any such payment, invoice, notice or other communication shall be effective on the date of receipt. The addresses are as follows:

13.1.1 In the case of IBM,

for mailing notices and other communications to IBM:

IBM Corporation
2070 Route 52
Hopewell Junction, NY 12533
Fax: ***
Attention: ***

With a copy to:

IBM Corporation
Drop 92B
2070 Route 52
Hopewell Junction, NY 12533
Fax: (845) 892-5358
Attention: Associate General Counsel, Microelectronics

for electronic funds transfer to IBM:

IBM Director of Licensing
International Business Machines Corporation

Bank Account Number: ***
ABA Routing Number: ***

13.1.2 In the case of AMD,

for mailing notices and other communications to AMD:

AMD
One AMD Place
PO Box 3453, MS150
Sunnyvale, CA 94088
Tel: (408) 749-2202
Fax: (408) 774-7399
Attention: General Counsel

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SECTION 14 - POTENTIAL EXPANSION OF PROCESS DEVELOPMENT PROJECTS

Either Party may submit a request to the Management Committee to expand the scope of the Process Development Projects as set forth in Section 3.1. In order to expand the scope of the Process Development Projects the Management Committee must mutually agree and submit such proposal to the senior executives of the Parties, as defined in Section 4.1.1 for review. If the Parties agree to a change of scope, any such agreement must be set forth in a signed amendment to this Agreement. In determining whether or not to expand the scope of the Process Development Projects, the Parties shall evaluate each such request in light of the overall impact such modification would have on the Strategic Technology Objectives and Development Schedule of the Process Development Projects, set forth in Exhibits A and B, as well as cost, schedule, and other business objectives.

SECTION 15 - FORCE MAJEURE

- 15.1 Either Party hereto shall be excused from the fulfilment of any Process Development Project obligation, except for payment obligations, under this Agreement for so long as such fulfilment may be hindered or prevented by any circumstances of force majeure such as but not limited to acts of God, war, riot, strike, lockout, labor unrest, fire, flood, other natural catastrophe, shortage of materials or transportation, national or local government regulations or any other circumstance outside its control, provided that the Party seeking to be excused shall make every reasonable effort to minimize the hindrance of such fulfilment.
- 15.2 Upon the ending of such circumstance, the Party excused shall without undue delay resume the fulfilment of obligations affected.

SECTION 16 - TAXES

Each Party shall bear and pay all taxes (including, without limitation, sales and value added taxes but excluding income tax as specified below) imposed by its own national government, including any political subdivision thereof, as the result of the existence of this Agreement or the exercise of rights hereunder. If either Party is required by its national government to pay income tax in respect of the payments and/or royalties made by it to either or both of the other Parties, said Party shall pay such income tax on behalf of said other Party. Said Party may deduct such income tax from said payments and/or royalties otherwise due and shall furnish said other Party, within a reasonable time after its receipt of tax certificates from the applicable government entity such certificates and other evidence of deduction and payment thereof as said Party may properly require. In addition, each Party may independently pursue any applicable tax credit for its share of expenses related to the Process Development Projects.

SECTION 17 - LIMITATION OF LIABILITY

- 17.1 In no event shall either Party be liable to the other Party for incidental damages, punitive damages, lost profits, lost savings or any other such damages, including consequential damages, regardless of whether the claim is for breach of contract, breach of warranty, tort (including negligence), failure of a remedy to accomplish its purpose or otherwise, even if such Party (or any Subsidiary) has been advised of the possibility of such damages.
- 17.2 In no event shall either Party's (or its respective Subsidiaries') aggregate liability to the other Party for actual direct damages in connection with any claim or claims relating to this Agreement exceed the amount of *** United States dollars (US \$***), regardless of the form of action, provided that this limitation will not apply to: i) any claim for payment of a sum or sums properly due under this Agreement; ii) breach of confidentiality or license; or iii) death, personal injury or physical damage to real property or tangible personal property resulting from a Party's own negligence, or that of its employees, agents or subcontractors.
- 17.3 Nothing contained herein shall limit either Party's right to seek a preliminary injunction, temporary restraining order or any other equitable relief in order to avoid material harm to its property, rights or other interests. The Parties agree that for breaches of confidentiality or license provisions the Party whose license grant or confidential information has been breached ("non-breaching Party") shall suffer irreparable harm and that remedies at law may be insufficient; therefore, the non-breaching Party may seek any remedy at law or in equity, including but not limited to, preliminary injunction, injunction, and/or a temporary restraining order, without having to prove either failure of a remedy at law or irreparable harm.
- 17.4 In no event shall either Party (or its respective Subsidiaries) be liable for any damages claimed by the other Party based on any Third Party claim, except as specifically set forth in Section 17.2 (iii) above.

SECTION 18 - GENERAL

- 18.1 Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of either Party hereto (including any contraction, abbreviation or simulation of any of the foregoing); and each Party hereto agrees not to disclose to other than its Subsidiaries the terms and conditions of this Agreement except as may be required by law or government rule or regulation, without the express written consent of the other Party. Notwithstanding the foregoing, 1) the Parties shall be permitted to disclose a summary of pertinent Sections of this Agreement that are reasonably necessary for disclosing and/or licensing under this Agreement, and 2) each Party shall be permitted

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to disclose pertinent Sections of this Agreement to such Party's independent accounting firm and outside attorneys; provided, however, that any such disclosure is under a written agreement containing restrictions of confidentiality at least as stringent as those contained herein.

- 18.2 This Agreement shall be construed, and the legal relations created herein between the Parties shall be determined exclusively, in accordance with the laws of the United States of America and, specifically, the State of New York, without regard to conflicts of law, as if said Agreement were executed in, and fully performed within, the State of New York. Any proceeding to enforce, or to resolve disputes relating to, this Agreement shall be brought before a court of competent jurisdiction in the State of New York, including a Federal District Court, sitting within such State. Parties hereby expressly waive any right to a jury trial and agree that any proceeding hereunder shall be tried by a judge without a jury. In any proceedings no Party shall assert that such court lacks jurisdiction over it or the subject matter of the proceeding.
- 18.3 In the event of any dispute under this Agreement, and as a condition precedent to any Party filing suit, instituting a proceeding or seeking other judicial or governmental resolution in connection therewith, the Parties will attempt to resolve such dispute by negotiation in accordance with the following dispute resolution process. Excepting only that a Party may institute a proceeding seeking an order for payment of any sum properly due and unpaid, a preliminary injunction, temporary restraining order, or other equitable relief, if necessary in the opinion of that Party to avoid material harm to its property, rights or other interests, before commencing or at any time during the course of, the dispute procedure in this Section 18.3.
- 18.3.1 Such negotiations shall first involve the individuals in the Management Committee. These individuals will exercise reasonable efforts to resolve such dispute.
- 18.3.2 If such negotiations do not result within thirty (30) calendar days of their receipt of a written referral to them in a resolution of the dispute, the dispute will be referred in writing to the senior executives named in Section 4.1.1, above, which senior executives shall discuss and meet in person, if necessary, in order to attempt to negotiate a resolution to the dispute.
- 18.3.3 Except as set forth above, no Party shall file suit, institute a proceeding or seek other judicial or governmental resolution of the dispute until at least sixty (60) calendar days after the first meeting between the senior executives.
- 18.4 In the event that any litigation occurs between or among the Parties pertaining to this Agreement and any technical issues arise in the course thereof, the Parties shall make good faith efforts to select one or more neutral mutually acceptable technical experts with expertise in the pertinent technical issues to assist the court in understanding and evaluating such issues.

- 18.5 Nothing contained in this Agreement shall be construed as conferring on any Party any license or other right to copy the exterior design of any product of the other Party.
- 18.6 No Party shall assign any of its rights or obligations under this Agreement without prior written permission from the other Party. If any Party reorganizes its business so as to set up a Related Subsidiary or Wholly Owned Subsidiary that shall include the entire business and assets responsible for such Party's performance of its obligations under this Agreement then the other Party agrees that the permission to assign to such Related Subsidiary or Wholly Owned Subsidiary shall not be unreasonably withheld. Any attempted such assignment without such permission shall be null and void.
- 18.7 No actions, regardless of form, arising out of this Agreement, except for non-payment actions or intellectual property actions, may be brought by either Party more than two (2) years after the cause of action has arisen.
- 18.8 Each Party shall be responsible for compliance with all applicable laws, regulations and ordinances. In addition, no Party and none of its agents or employees acting on behalf of said Party will export or re-export any confidential information of the other Party, or any process, product or service that is produced as a result of the use of such confidential information, to any country specified in the applicable laws and regulations of the United States as a prohibited destination, without first obtaining the relevant government's approval, if required. As of the Effective Date the countries and nationals excluded for Specific Results and Proprietary Tools under the United States export laws and regulations are: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.
- 18.9 All monetary amounts specified herein are in lawful money of the United States of America. Any action required herein to be taken by a specified calendar month shall be taken by the last day of said month.
- 18.10 Neither this Agreement nor any activities hereunder shall impair any right of any Party to design, develop, manufacture, sell, market, service, or otherwise deal in, directly or indirectly, manufacturing processes, products or services developed by such Party completely independent of this Agreement, including those which are competitive with those offered by any Party. Subject to the confidentiality and license limitations set forth in this Agreement, each Party may pursue activities independently with any Third Party even if similar to the activities under this Agreement.
- 18.11 Each Party is an independent contractor and not an agent, employee or fiduciary of any other Party for any purpose whatsoever. No Party shall make any warranties or representations on any other's behalf, nor shall it assume or create any other obligations on any other's behalf. Nothing herein shall be taken to constitute a partnership or joint venture between or among the Parties hereto.
- 18.12 Press releases and other like publicity or advertising relating to this Agreement and/or which mentions the other Party by name shall be agreed upon by the Parties in writing prior to any release, such agreement not to be unreasonably withheld.

-
- 18.13 If any section or subsection of this Agreement is found by competent judicial authority to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any such section or subsection in every other respect and the remainder of the terms of this Agreement shall continue in effect so long as the amended Agreement still expresses the intent of the Parties. If the intent of the Parties cannot be preserved, the Agreement shall be renegotiated with the Parties substituting for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.
- 18.14 Any waiver by either Party of any breach of, or failure to enforce at any time, any of the provisions of any of this Agreement, shall not be construed as or constitute a continuing waiver of such provision, or a waiver of any other provision of this Agreement, nor shall it in any way affect the validity of any of this Agreement or any part thereof, or the right of either Party thereafter to enforce each and every provision of any of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

- 18.15 This Agreement will not be binding upon the Parties until it has been signed herein below by or on behalf of each Party in which event it shall be effective as of the date first above written. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, whether oral or written, made in the course of discussions and/or negotiations between the Parties or any officer or representative thereof with respect to the subject matter of this Agreement. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless made in writing and signed on behalf of each of such Parties by their respective representatives thereunto duly authorized. The requirement of written form may only be waived in writing.
- 18.16 This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original, but each of which together shall constitute one and the same agreement. Fax signatures will have the same legal effect as original signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Advanced Micro Devices, Inc.

By: /s/ Daryl Ostrander

Name: Daryl Ostrander
Title: Senior Vice President,
Logic Technology &
Manufacturing, Product
Technology Implementation
CPG

Date: September 15, 2004

International Business Machines Corporation

By: /s/ Harry C. Calhoun

Harry C. Calhoun
VP Strategy – Technology, IBM
Systems and Technology Group

Date: September 15, 2004

Amendment and Restatement of "S" Process Development Agreement between AMD and IBM
IBM - AMD Confidential

EXHIBIT A: TECHNICAL OBJECTIVES

EXHIBIT B: PROJECTED SCHEDULE

EXHIBIT C: AMD STAFFING

EXHIBIT D: MANAGEMENT COMMITTEE RESPONSIBILITIES

EXHIBIT E: PROJECT LEADER RESPONSIBILITIES

EXHIBIT F: VISITATION GUIDELINES

EXHIBIT G, H and I, Intentionally Left Blank

EXHIBIT J: DOCUMENTATION

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A.1 CMOS 10S TECHNICAL OBJECTIVES

Strategic Technology Objectives

Technology Implementation Options

The CMOS-10S technology may include the following features if needed and technically feasible:

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A.2 CMOS10SE TECHNICAL OBJECTIVES

Strategic Technology Objectives

Technology Implementation Options

The CMOS-10SE technology may include the following features if needed and technically feasible:

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A.3 CMOS-11S TECHNICAL OBJECTIVES

Strategic Technology Objectives

Technology Implementation Options

The CMOS-11S technology may include the following features if needed and technically feasible:

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A.4 CMOS-11S2 TECHNICAL OBJECTIVES

Strategic Technology Objectives

Technology Implementation Options

The CMOS-11S2 technology may include the following features, if needed and technically feasible:

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A.5 CMOS-12S TECHNICAL OBJECTIVES

Strategic Technology Objectives

Technology Implementation Options

The CMOS-12S technology may include the following features if needed and technically feasible:

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A.6 CMOS-12S2 TECHNICAL OBJECTIVES

Strategic Technology Objectives

Technology Implementation Options

The CMOS-12S2 technology may include the following features if needed and technically feasible:

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PROJECTED SCHEDULE

<u>PROJECT</u>	<u>10S</u>	<u>10SE</u>	<u>11S</u>	<u>11S2</u>	<u>12S</u>	<u>12S2</u>
T-Bulk	***	***	***	***	***	***
T1	***	***	***	***	***	***
T2**	***	***	***	***	***	***

** DEPENDENT ON THE AVAILABILITY OF A SUITABLE CUSTOMER PRODUCT

Checkpoint Definitions:

T-Bulk date: Initially identify elements of the relevant Process Development Project that IBM plans to use in IBM's Bulk CMOS

T1: yield process and reliability demonstration on an integrated process Test Site

T2: meets functional requirements for an SOI Integrated Circuit product (not Test Site)

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AMD STAFFING ALLOCATION*

Technical AREA	EXAMPLE	Proposed AMD Engineers**
FEOL Integration	Integration	TBD
FEOL Unit Process	RIE, Hot, Clean, CMP, CVD, Silicide, oxide	TBD
Other FEOL Module Development	SOI material, SiGe, etc.	TBD
Lithography	Resist, metrology, OPC, Stepper Application	TBD
Other Lithography + Model	Data prep, Modeling, ESD	TBD
BEOL Integration	Integration	TBD
BEOL Unit Process	SiLK, CVD, RIE, Liner, CMP	TBD
Device Design	Device, Characterization, manual	TBD
Device	Device Modeling, SPICE Modeling	TBD
Product Engineering Associated with Process Qualification	Test Program, Failure Analysis	TBD

* The Staffing Allocation will be determined by the mutual agreement of the IBM Project Leader and AMD Deputy Project Leader.

** These engineers are expected to be productive immediately and should have enough experience in the given technology area to work independently and lead sub teams.

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MINIMUM STAFFING PARTICIPATION
(Average Annual Staffing Level)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
AMD	***	***	***	***	***	***

*** Ramp to this staffing level by end of June 2003. For the avoidance of doubt, until March 2003, no compensation pursuant to Section 4.3 shall be required for failure to meet the minimum staffing requirements.

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RESPONSIBILITIES OF THE MANAGEMENT COMMITTEE

- Approve changes in Strategic Technical Objectives as set forth in Exhibit A*
- Approve changes of schedules of the Projects set forth in Exhibit B*
- Establish a regular review process on no more than a quarterly basis with business executives of each of the Parties of at least the level of Vice President or other comparable level.
- Approve external communications about the goals of the Projects and external publications*
- Resolve such other items as the Management Committee deems appropriate or as indicated elsewhere in the Agreement as requiring the agreement of the Management Committee.

*** Items marked require unanimous approval of the Management Committee**

All other responsibilities, including day-to-day management responsibility for the results to be achieved under the Agreement, shall reside with the IBM Project Leader with the help of the AMD Deputy Project Leader.

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RESPONSIBILITIES OF THE IBM PROJECT LEADER

Project organization and coordination

- Responsible for implementation of directives from the Management Committee for the Process Development Projects
- Responsible for identification and presentation to Management Committee of those items which need Management Committee approval
- Responsible for Project reporting at Management Committee reviews
- Responsible for quarterly reports (technology status, milestones).
- Responsible for allocation of Project resources
- Responsible for review and approval of technical publications
 - Responsible for determining the organizational structure of the Project Team and appointing key technical leaders and project managers to execute Projects
 - Responsible for managing the IBM infrastructure to support the Project Activities
 - Responsible for Project schedule planning
 - Responsible for management of IBM Personnel
- Responsible for completion of Documentation for each Process Development Projects

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RESPONSIBILITIES OF THE AMD DEPUTY PROJECT LEADER

- Responsible for implementation of directives from the Management Committee for the Projects
- Responsible for identification and presentation to Management Committee of those items which need Management Committee approval
- Responsible for Project reporting at Management Committee reviews
 - Responsible for quarterly reports (technology status, milestones)
 - Responsible for review and approval of technical publications
 - Responsible for management of respective Party's personnel
 - Responsible for completion of Documentation for each Process Development Projects

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VISITATION GUIDELINES

- 1.0 IBM shall issue security badges to visitors. Security badges must be returned by visitors at the end of each assignment. Security badges must be visibly displayed at all times by visitors while on IBM premises. If the security badge is lost or stolen, the IBM Technical Coordinator shall be immediately advised. Security badges shall not be loaned or interchanged.
- 2.0 Visitors shall only enter those buildings, departments, or areas which are specifically designated by the IBM Technical Coordinator and for which entry is required under this Agreement.
- 3.0 Visitors shall comply with all log-in/log-out requirements when entering or leaving IBM buildings and/or designated work areas.
- 4.0 Visitors shall comply with all security and safety guidelines which are posted on IBM premises and/or are otherwise specified by IBM.
- 5.0 IBM copying equipment and/or other IBM equipment (such as data processing equipment and word processing equipment) shall not be used by visitors except with prior approval of the IBM Technical Coordinator.
- 6.0 Visitors shall not disturb materials lying on IBM desks, mounted on easels or displayed on chalkboards.
- 7.0 Visitors shall promptly leave buildings and department areas after completing work assignments.
- 8.0 Visitors shall not leave IBM external doors propped open. No IBM materials shall be removed from buildings without prior written approval.
- 9.0 Alcoholic beverages, illegal drugs, guns and ammunition, cameras, and recording devices are not permitted on IBM premises.

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DOCUMENTATION**Wafer Process And Characterization Documentation**

Process routing

Process of Record (POR)

- Process change history

Process assumptions

Process engineering specifications

Unit process descriptions and characterization (rate, uniformity, selectivity, particle, etc.)

Process recipes for critical unit processes

Specification Sheets for critical dimensions, overlay

ED analysis data of critical layers (litho process widow)

Cp/Cpk for critical measurements

List of critical tools including QC tools

Critical Equipment specifications

- Critical maintenance procedures

TEM Cross Sections (both center and edge)

Finished wafer: STI, GC, CS, LI, Interconnect spacer edge, LI bottom on STI, CS bottom, Via bottom

In Line wafer: After GC etch, after spacer-1 etch, after spacer-2 etch, after CS etch, after V2 etch, after M2 etch

Tool control/monitor data for critical tools

Material Specifications for critical materials

Defect Catalog

SOI Wafer Specification

Bill Of Materials For wafers

SIMS data (as available)

Device design and modeling:

- SOI device model

- Parameter extraction

- AC Performance Verification

- Tolerance data

- Compact model

-
- Device-level library
 - HSpice convergence
 - Body contact modeling
 - SOI Resistor and capacitor
 - ESD circuitry at I/O pads

Technology Qualification Vehicle Documentation

Technology Design Manual

Test Site description

- Groundrule waivers

Kerf description document

In-Line Electrical Specification document

Layout & mask information (for Test Site) in GDSII format

Reliability Documentation

Qualification plan

Early reliability stress results on Test Site (devices, interconnects, capacitor) including NBTI

Physical failure analysis data after E, SM reliability tests

Electrical Results

Test programs (for IBM Proprietary Tool – electrical tester)

Functional test

Burn-In/reliability

T2 Product Characterization data for SOI Integrated Circuit product

(dependent on availability of common IBM / AMD product)

Lithography Documentation

- Mask fabrication specifications
- Mask data processing sequence including OPC/PPC

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-
- Method of process characterization to extract OPC/PPC data correction parameters for the correction software
 - Mask qualification procedure
 - Specific mask making tool selection and its derived mask fabrication specification if exists

Additional requests for Documentation shall be by the mutual agreement of the Project Leaders, which agreement shall not be unreasonably withheld. If, however, the Project Leaders do not agree, such Party may escalate the lack of agreement among the Project Leaders to the Management Committee for resolution. In addition, such Party may access information available during the Process Development Projects and document such information for the purpose of transferring such information to its own manufacturing facilities. All such documentation shall be made available to all three (3) Parties.

**Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Hector de J. Ruiz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Advanced Micro Devices, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2004

/s/ Hector de J. Ruiz

Hector de J. Ruiz
Chairman of the Board, President and Chief Executive Officer

Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Robert J. Rivet, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Advanced Micro Devices, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2004

/s/ Robert J. Rivet
Robert J. Rivet
Executive Vice President and Chief Financial Officer

**Certification of Chief Executive Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Advanced Micro Devices, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 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: November 4, 2004

/s/ Hector de J. Ruiz

Hector de J. Ruiz
Chairman of the Board,
President and Chief Executive Officer

**Certification of Chief Financial Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Advanced Micro Devices, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 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: November 4, 2004

/s/ Robert J. Rivet

Robert J. Rivet
Executive Vice President and
Chief Financial Officer