

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

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended November 1, 2009

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 0-15451



**PHOTRONICS, INC.**

*(Exact name of registrant as specified in its charter)*

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

**06-0854886**  
*(IRS Employer  
Identification Number)*

**15 Secor Road, Brookfield, Connecticut 06804**  
*(Address of principal executive offices and zip code)*

**(203) 775-9000**  
*(Registrant's telephone number, including area code)*

Securities registered pursuant to Section 12(b) of the Act: **Common Stock, \$0.01 par value per share - NASDAQ Global Select Market**

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  
Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.  
Yes  No

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.  
Large Accelerated Filer  Accelerated Filer  Non-Accelerated Filer  Smaller Reporting Company

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

As of May 3, 2009, which was the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the shares of the registrant common stock held by non-affiliates was approximately \$67,211,105 (based upon the closing price of \$1.76 per share as reported by the Nasdaq Global Select Market on that date).

## DOCUMENTS INCORPORATED BY REFERENCE

Proxy Statement for the 2010  
Annual Meeting of Shareholders  
to be held in April 2010

Incorporated into Part III  
of this Form 10-K

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### Forward-Looking Information

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements made by or on behalf of Photronics, Inc. ("Company" or "we"). These statements are based on management's beliefs, as well as assumptions made by and information currently available to management. Forward-looking statements may be identified by words like "expect", "anticipate", "believe", "plan", "projects", and similar expressions. All forward-looking statements involve risks and uncertainties that are difficult to predict. In particular, any statement contained in this annual report on Form 10-K, in press releases, written statements or other documents filed with the Securities and Exchange Commission, or in the Company's communications and discussions with investors and analysts in the normal course of business through meetings, phone calls and conference calls, regarding the consummation and benefits of future acquisitions, expectations with respect to future sales, financial performance, operating efficiencies and product expansion, are subject to known and unknown risks, uncertainties and contingencies, many of which are beyond the control of the Company. These factors may cause actual results, performance or achievements to differ materially from anticipated results, performances or achievements. Factors that might affect such forward-looking statements include, but are not limited to, overall economic and business conditions; the demand for the Company's products; competitive factors in the industries and geographic markets in which the Company competes; changes in federal, state and international tax requirements (including tax rate changes, new tax laws and revised tax law interpretations); the Company's ability to place new equipment in service on a timely basis; interest rate fluctuations and other capital market conditions, including changes in the market price of the Company's common stock; foreign currency rate fluctuations; economic and political conditions in international markets; the ability to obtain additional financing; the ability to achieve anticipated synergies and other cost savings in connection with acquisitions and productivity programs; the timing, impact and other uncertainties of future acquisitions; the seasonal and cyclical nature of the semiconductor and flat panel display industries; management changes; damage or destruction to the Company's facilities by natural disasters, labor strikes, political unrest or terrorist activity; the ability to fully utilize its tools; the ability of the Company to achieve desired yields, pricing, product mix, and market acceptance of its products; changes in technology; and the ability of the Company to obtain necessary export licenses. Any forward-looking statements should be considered in light of these factors. Accordingly, there is no assurance that the Company's expectations will be realized. The Company does not assume responsibility for the accuracy and completeness of the forward-looking statements and does not assume an obligation to provide revisions to any forward-looking statements.

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## PART I

### ITEM 1. BUSINESS

#### General

Photronics, Inc. ("Company") is a Connecticut corporation, organized in 1969. Its principal executive offices are located at 15 Secor Road, Brookfield, Connecticut 06804, telephone (203) 775-9000. Photronics, Inc. and its subsidiaries are collectively referred to herein as "Photronics" or the "Company". The Company's website is located at <http://www.photronics.com>. The Company makes available, free of charge through its website, its annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after such materials are electronically filed or furnished to the Securities and Exchange Commission. The information contained or incorporated in the Company's website is not part of these documents.

Photronics, Inc. and its subsidiaries is one of the world's leading manufacturers of photomasks, which are high precision photographic quartz plates containing microscopic images of electronic circuits. Photomasks are a key element in the manufacture of semiconductors and flat panel displays, or FPDs, and are used as masters to transfer circuit patterns onto semiconductor wafers and flat panel substrates during the fabrication of integrated circuits, or ICs, and a variety of FPDs and, to a lesser extent, other types of electrical and optical components. The Company currently operates principally from nine manufacturing facilities; two of which are located in Europe, two in Taiwan, one each in Korea and Singapore; and three in the United States. The Company closed its manufacturing facilities in Manchester, United Kingdom and Shanghai, China during the year ended November 1, 2009.

#### Manufacturing Technology

The Company manufactures photomasks, which are used as masters to transfer circuit patterns onto semiconductor wafers and flat panel substrates. The Company's photomasks are manufactured in accordance with circuit designs provided on a confidential basis by its customers. IC and FPD photomasks are manufactured in layers, each having a distinct pattern which is etched onto a different photomask. The resulting series of photomasks is then used to image the circuit patterns onto each successive layer of a semiconductor wafer or flat panel substrate. The typical manufacturing process for a photomask involves the receipt and conversion of circuit design data to manufacturing pattern data. A

lithography system then exposes the circuit pattern onto the photomask blank. The exposed areas are developed and etched to produce that pattern on the photomask. The photomask is inspected for defects and conformity to the customer design data, any defects are repaired, any required pellicles (protective translucent cellulose membranes) are applied and, after final inspection, the photomask is shipped to the customer.

The Company currently supports customers across the full spectrum of IC production and FPD technologies by manufacturing photomasks using electron beam or optical-based technologies. Electron beam and laser-based systems are the predominant technologies used for photomask manufacturing. These technologies are capable of producing the finer line resolution, tighter overlay and larger die size for the larger and more complex circuits currently being designed. Electron beam and laser generated photomasks can be used with the most advanced processing techniques to produce the most advanced semiconductor and FPD display devices intended for use in an array of products. However, in the case of IC production, electron beam technologies fabricate the large majority of critical layer photomasks. End markets served with IC photomasks include devices used for microprocessors, memory, telecommunications and related applications. The Company currently owns a number of high-end and mature electron beam and laser-based systems. The production of photomasks by the optical (laser-based) method is less expensive and less precise than those manufactured on high-end electron beam systems.

The first several layers of photomasks are sometimes required to be delivered by the Company within 24 hours from the time it receives customers' design data. The ability to manufacture high quality photomasks within short time periods is dependent upon robust processes, geographic location, efficient manufacturing methods, high yield and high equipment reliability. The Company works to meet these requirements by making significant investments in research and development, manufacturing and data processing systems, and by utilizing statistical process control methods to optimize the manufacturing process and reduce cycle times.

Quality control is an integral part of the photomask manufacturing process. Photomasks are manufactured in temperature, humidity, and particulate controlled clean rooms because of the high level of precision, quality and yields

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required. Each photomask is inspected several times during the manufacturing process to ensure compliance with customer specifications. The Company continues to make substantial investments in equipment to inspect and repair photomasks to ensure that customer specifications are met. After inspection and any necessary repair, the Company utilizes proprietary processes to clean the photomasks prior to shipment.

The majority of IC photomasks produced for the semiconductor industry employ geometries of 90 nanometers or larger. At these geometries, the Company can produce full lines of photomasks and there is no significant technology employed by the Company's competitors that is not also available to the Company. The Company is also capable of producing full lines of photomasks for high-end IC and FPD applications. In the case of IC, this includes masks at and below the 65 nanometer technology node and for FPD at and above the Generation 7 technology node. The Company has access to technology and customer qualified manufacturing capability that allows it to compete in high-end markets serving both IC and FPD applications.

## **Sales and Marketing**

The market for photomasks primarily consists of domestic and international semiconductor and FPD manufacturers and designers, including a limited number of manufacturers who have the capability to internally manufacture photomasks. Photomasks are manufactured by independent merchant manufacturers like us, and by semiconductor and FPD manufacturers that produce photomasks exclusively for their own use (captive manufacturers). Since the mid-1980s, there has been a strong trend in Asia, Europe and North America toward the divestiture or closing of captive photomask operations by semiconductor manufacturers and an increase in the share of the market served by independent manufacturers. This trend has been driven by the increasing complexity involved in manufacturing plus the high cost of the necessary capital equipment.

Generally, the Company and each of its customers engage in a qualification and correlation process before the Company becomes an approved supplier. Thereafter, the Company typically negotiates pricing parameters for a customer's orders based on the customer's specifications. Some prices may remain in effect for an extended period. In some instances, the Company enters into sales arrangements, based on the understanding that, as long as the Company's performance is competitive, the Company will receive a specified percentage of that customer's photomask requirements.

The Company conducts its sales and marketing activities primarily through a staff of full-time sales personnel and customer service representatives who work closely with the Company's management and technical personnel. In addition to the sales personnel at the Company's manufacturing facilities, the Company has sales offices throughout the United States, Europe and Asia.

The Company supports international customers through both its domestic and international facilities. The Company considers its presence in international markets important to attracting new customers, providing global solutions to its customers, minimizing delivery time, and serving customers that utilize manufacturing foundries outside of the United States, principally in Asia. See Note 17 to the Company's consolidated financial statements for the amount of net sales and long-lived assets attributable to each of the Company's geographic areas of operations.

## **Customers**

The Company primarily sells its products to leading semiconductor and FPD manufacturers. The Company's largest customers during the fiscal year ended November 1, 2009 ("fiscal 2009") included the following:

AU Optronics Corp.	Maxim Integrated Products, Inc.
Chartered Semiconductor Manufacturing, Ltd.	Micron Technology, Inc.
Dongbu HiTek Co. Ltd.	National Semiconductor Corporation
Freescale Semiconductor, Inc.	Novatek Microelectronics Corp., Ltd.

HannStar Display Corp.  
IM Flash Technologies, LLC  
Integrated Device Technology, Inc.  
Jazz Semiconductor, Inc.  
LG Philips LCD Co., Ltd.  
Magnachip Semiconductor

ON Semiconductor Corporation  
Samsung Electronics Co., Ltd.  
Skyworks Solutions, Inc.  
ST Microelectronics, Inc.  
Texas Instruments Incorporated  
United Microelectronics Corp.

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During fiscal 2009, the Company sold its products and services to approximately 600 customers. Samsung Electronics Co., Ltd. accounted for approximately 19% of the Company's net sales in fiscal 2009, and 25% in fiscal 2008 and 2007. This included sales of both IC and FPD photomasks. The Company's five largest customers, in the aggregate, accounted for approximately 42% in fiscal 2009, 44% in fiscal 2008 and 43% in fiscal 2007, of net sales. A significant decrease in the amount of sales to any of these customers could have a material adverse effect on the financial performance and business prospects of the Company.

### **Seasonality**

The Company's quarterly revenues can be affected by the seasonal purchasing of its customers. The Company is typically impacted during its first fiscal quarter by the North American and European holiday periods, as some customers reduce their effective workdays and orders during this period. Additionally, the Company can be impacted during its first or second quarter by the Asian New Year holiday period which also may reduce customer orders.

### **Research and Development**

The Company conducts its primary research and development activities at the MP Mask Technology Center, LLC ("MP Mask") joint venture operation located in Boise, Idaho, and in site-specific research and development programs to support strategic customers. The MP Mask research and development programs, coupled with site-specific research and development initiatives, are designed to advance the Company's leadership in technology and manufacturing efficiency. The Company also conducts application oriented research and development activities to support the early adoption of new photomask or supporting data and services technology into the customers' applications. Currently, research and development photomask activities are focused on 32 nanometer node and below IC technology and Generation 8 and higher FPD technology. The Company believes these core competencies will continue to be a critical part of semiconductor manufacturing as optical lithography continues to scale device capabilities at and below 45 nanometer. The Company has incurred research and development expenses of \$15.4 million, \$17.5 million and \$17.3 million in fiscal 2009, 2008 and 2007, respectively. The Company believes that it owns, controls, or licenses valuable proprietary information necessary for its business as it is presently conducted. This includes trade secrets as well as patents. The Company believes that its intellectual property and trade secret know-how will continue to be important to its technical leadership in the field of photomasks.

### **Patents and Trademarks**

The Company has over 45 patents with ownership interest in the United States. The subject matter of these patents generally relates to the manufacture of photomasks themselves and the use of photomasks to manufacture other products. The expiration dates of these patents range from 2011 to 2027. Additionally, pursuant to the technology license agreement with Micron Technology, Inc. (Micron), the Company has access to certain technology of Micron and MP Mask. The Company also has a number of trademarks and trademark registrations in the United States and in other countries.

While the Company believes that its intellectual property is, and will continue to be, important to the Company's technical leadership in the field of photomasks, the Company's operations are not dependent on any one individual patent. The Company protects its intellectual property rights regarding products and manufacturing processes through patents and trade secrets. The Company also relies on non-disclosure agreements with employees and vendors to protect its intellectual property and proprietary processes.

### **Materials, Supplies and Equipment**

Raw materials used by the Company generally include high precision quartz plates (including large area plates), which are used as photomask blanks, primarily obtained from Japanese and Korean suppliers; pellicles and electronic grade chemicals, which are used in the manufacturing process; and compacts, which are durable plastic containers in which photomasks are shipped. These materials are generally sourced from several suppliers and although the Company is not dependent on any one supplier for most of its raw materials, glass blanks used for the production of certain high-end photomasks are only available from one supplier. The Company believes that its utilization of a select group of strategic suppliers enables it to access the most technologically advanced materials available. On an ongoing basis, the Company continues to consider additional supply sources.

The Company relies on a limited number of equipment suppliers to develop and supply the equipment used in the photomask manufacturing process. Although the Company has been able to obtain equipment on a timely basis, the

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inability to obtain equipment when required could adversely affect the Company's business and results of operations. The Company also relies on these and additional suppliers to develop future generations of manufacturing systems to support the Company's requirements.

## Backlog

The first several levels of a set of photomasks for a circuit pattern are often required to be shipped within 24 hours of receiving a customer's designs. Because of the short period between order and shipment dates (typically from 1 day to 2 weeks) for a significant amount of the Company's sales, the dollar amount of current backlog is not considered to be a reliable indicator of future sales volume.

## International Operations

International sales were approximately 72%, 77% and 75% of the Company's sales in fiscal 2009, 2008 and 2007, respectively. The Company believes that maintaining significant international operations requires it to have, among other things, a local presence in the markets in which it operates. This requires a significant investment in financial, management, operational, and other resources.

Operations outside the United States are subject to inherent risks, including fluctuations in exchange rates, political and economic conditions in various countries, unexpected changes in regulatory requirements, tariffs and other trade barriers, difficulties in staffing and managing international operations, longer accounts receivable collection cycles and potentially adverse tax consequences. These factors may have a material adverse effect on the Company's ability to generate sales outside the United States and to deploy resources where they can be used to their greatest advantage, and consequently may adversely affect its financial conditions and results of operations.

Note 17 of the notes to the Company's consolidated financial statements reports net sales and long-lived assets by geographic region.

## Competition

The photomask industry is highly competitive and most of the Company's customers utilize multiple photomask suppliers. The Company's ability to compete depends primarily upon its consistency of product quality and timeliness of delivery, as well as pricing, technical capability and service. The Company also believes that proximity to customers is an important factor in certain markets where cycle time from order to delivery is critical. A few competitors have greater financial, technical, sales, marketing and other resources than the Company. The Company believes that consistency of product quality, timeliness of delivery, and price are the principal factors considered by customers in selecting their photomask suppliers. The Company's inability to meet these requirements could adversely affect its sales. The Company believes that it is able to compete effectively because of its dedication to customer service, its investment in state-of-the-art photomask equipment and facilities, and its experienced technical employees.

The Company estimates that for the types of photomasks it manufactures (IC and FPD) the size of the total market (captive and merchant) is approximately \$3.2 billion. Competitors include Compugraphics, Inc., Dai Nippon Printing Co., Ltd., Hoya Corporation, SK-Electronics Co. Ltd., Taiwan Mask Corporation, Toppan Printing Co., Ltd. and Toppan Chungwha Electronics. The Company also competes with semiconductor manufacturers' captive photomask manufacturing operations that supply photomasks for internal use and, in some instances, also for external customers and foundries. The Company expects to face continued competition which in the past has led to pressure to reduce prices. The Company believes the pressure to reduce prices has contributed to the decrease in the number of independent manufacturers, and expects such pressure to continue in the future.

## Employees

As of November 1, 2009, the Company and its majority-owned subsidiaries had approximately 1,300 employees. The Company believes it offers competitive compensation and other benefits and that its employee relations are good.

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## ITEM 1A. RISK FACTORS

### **The Company is dependent on the semiconductor industry which, as a whole, is volatile and could have a negative material impact on its business.**

The Company sells substantially all of its photomasks to semiconductor designers, manufacturers and foundries, as well as to other high performance electronics manufacturers. The Company believes that the demand for photomasks depends primarily on design activity rather than sales volume from products using photomask technologies. Consequently, an increase in semiconductor or FPD sales does not necessarily result in a corresponding increase in photomask sales. In addition, the reduced use of customized ICs, a reduction in design complexity, other changes in the technology or methods of manufacturing or designing semiconductors or a slowdown in the introduction of new semiconductor or FPD designs could reduce demand for photomasks even if demand for semiconductors and FPDs increases. Further, advances in design and production methods for semiconductors and other high performance electronics could reduce the demand for photomasks. Historically, the semiconductor industry has been volatile, with sharp periodic downturns and slowdowns. These downturns have been characterized by, among other things, diminished product demand, excess production capacity and accelerated erosion of selling prices. The semiconductor industry began to experience a downturn in fiscal 2008, which continued through fiscal 2009, and had an adverse impact on the Company's 2009 operating results.

The Company's sales of photomasks for use in fabricating high performance electronic products such as FPDs decreased in fiscal 2009 as compared to fiscal 2008. The Company's results may suffer if the FPD photomask market does not grow or if the Company is unable to serve this market successfully. As is the case with semiconductor photomask demand, the Company believes that demand for photomasks for FPDs depends primarily on design activity and, to a lesser extent upon an increase in the number of production facilities used to manufacture FPDs. As a result, an increase in FPD sales will not necessarily lead to a corresponding increase in photomask sales. The technology for fabricating FPDs continues to develop in order to increase the size and improve the resolution of FPDs. A slowdown in the development of new technologies for fabricating FPDs could reduce the demand for related photomasks even if demand for FPDs increases.

### **The Company incurred net losses in fiscal years 2009 and 2008, and may incur future net losses.**

The Company incurred net losses of \$41.9 million in fiscal 2009 and \$210.8 million in fiscal 2008. These net losses were incurred due to the global recession and related severe downturn experienced by the semiconductor industry that began in 2008. Net losses incurred in both fiscal years 2009 and 2008 include significant non-cash charges for restructurings, impairments of goodwill, and impairments of long-lived assets. The Company cannot provide assurance of when Photronics will return to profitability.

**The Company's quarterly operating results fluctuate significantly and may continue to do so in the future which could adversely impact the Company's business.**

The Company has experienced fluctuations in its quarterly operating results and anticipates that such fluctuations will continue and could intensify in the future. Fluctuations in operating results may result in volatility in the prices of the Company's securities, particularly its common stock and securities linked to the value of the Company's common stock. Operating results may fluctuate as a result of many factors, including size and timing of orders and shipments, loss of significant customers, product mix, technological change, fluctuations in manufacturing yields, competition and general economic conditions. The Company operates in a high fixed cost environment and, to the extent its revenues and asset utilization increase or decrease, operating margins will be positively or negatively impacted. The Company's customers generally order photomasks on an as-needed basis, and substantially all of the Company's net sales in any quarter are dependent on orders received during that quarter. Since the Company operates with little backlog and the rate of new orders may vary significantly from month-to-month, the Company's capital expenditures and expense levels are based primarily on sales forecasts. Consequently, if anticipated sales in any quarter do not occur when expected, capital expenditures and expense levels could be disproportionately high, and the Company's operating results would be adversely affected. Due to the foregoing factors, the Company believes that period-to-period comparisons of its operating results are not necessarily meaningful and that these comparisons cannot be relied upon as indicators of future performance. In addition, in future quarters the Company's operating results could be below the expectations of public market analysts and investors, which, in turn, could materially adversely affect the market prices of the Company's common stock.

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**The Company's industry is subject to rapid technological change and the Company might fail to remain competitive, which could have a material adverse effect on the Company's business and results of operations.**

The photomask industry has been, and is expected to continue to be, characterized by technological change and evolving industry standards. In order to remain competitive, the Company will be required to continually anticipate, respond to and utilize changing technologies of increasing complexity in both traditional and emerging markets that it serves. In particular, the Company believes that, as semiconductor geometries continue to become smaller and FPDs become larger with improved performance, it will be required to manufacture increasingly complex photomasks. Additionally, demand for photomasks has been, and could in the future be, adversely affected by changes in methods of fabricating semiconductors and high performance electronics (that could affect the type or quantity of photomasks utilized), such as changes in semiconductor demand that favor field programmable gate arrays and other semiconductor designs that replace application-specific ICs. Additionally, increased market acceptance of alternative methods of IC designs onto semiconductor wafers, such as direct-write lithography, could reduce or eliminate the need for photomasks in the production of semiconductors. As of the end of fiscal 2009, direct-write lithography has not been proven to be a commercially viable alternative to photomasks, as it is considered too slow for high volume semiconductor wafer production. However, should direct-write or any other alternative methods of transferring IC designs to semiconductor wafers without the use of photomasks achieve market acceptance, the Company's business and results of operations would be materially adversely affected. If the Company is unable to anticipate, respond to or utilize these or other changing technologies, due to resource, technological or other constraints, its business and results of operations could be materially adversely affected. Further, should sales volumes decrease based upon the flow of design releases from the Company's customers, the Company may have excess or underutilized production capacity that could significantly impact operating margins, or result in write-offs from asset impairments.

**The Company's operations will continue to require substantial capital, which it may be unable to obtain.**

The manufacture of photomasks requires substantial investments in high-end manufacturing capability at existing and new facilities. The Company expects that it will be required to continue to make substantial capital expenditures to meet the technological demands of its customers and to position it for future growth. The Company's capital expenditure payments for fiscal 2010 are expected to be in the range of \$45 million to \$55 million, of which \$10 million was accrued as of November 1, 2009. Further, the Company's credit facility has a limitation on capital expenditure payments. The Company cannot provide assurance that it will be able to obtain the additional capital required in connection with its operations on reasonable terms, if at all, or that any such expenditure will not have a material adverse effect on its business and results of operations.

**The Company's agreements with Micron have several risks; should either company not comply or execute under these agreements it could significantly disrupt the Company's business and technology activities which could have a material effect on the Company's operations or cash flows.**

On May 5, 2006, Photronics and Micron entered into a joint venture known as MP Mask. The joint venture develops and produces photomasks for leading-edge and advanced next generation semiconductors. As part of the formation of the joint venture, Micron contributed its existing photomask technology center located at its Boise, Idaho, headquarters to MP Mask and Photronics paid Micron \$135.0 million in exchange for a 49.99% interest in MP Mask, a license for photomask technology of Micron and certain supply agreements. The Company invested an additional \$2.6 million in 2008 and \$3.5 million in 2007 in MP Mask for capital expenditure and working capital purposes, and received distributions from MP Mask of \$5.0 million in both 2009 and 2008.

MP Mask is governed by a Board of Managers, appointed by Micron and Photronics. Since MP Mask's inception, Micron as a result of its majority ownership, has appointed the majority of the managers. The number of managers appointed by each party is subject to change as ownership interests change. Under the operating agreement relating to the MP Mask joint venture, through May 5, 2010, the Company may be required to make additional contributions to the joint venture up to the maximum amount defined in the operating agreement. However, should the Board of Managers determine that additional funding is required, the joint venture shall pursue its own financing. If the joint venture is

unable to obtain its own financing it may request additional capital contributions from the Company. Should the Company choose not to make a requested contribution to the joint venture, Photronics' ownership interest may be reduced.

On May 19, 2009, the Company's capital lease agreement with Micron for the U.S. nanoFab was canceled, at which time Photronics and Micron agreed to enter into a new lease agreement for the U.S. nanoFab building. Under provisions

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of the new lease agreement, quarterly lease payments were reduced, the lease term was extended, and ownership of the property will not transfer to the Company at the end of the lease term. As a result of the new lease agreement, the Company reduced its lease obligations and the carrying value of its assets under capital leases by approximately \$28 million. Including the \$28 million reduction in carrying value of assets under capital leases, the Company's total investment to date in the purchase and equipping of the Company's U.S. nanoFab is approximately \$157 million. The U.S. nanoFab began production in the second fiscal quarter of 2008.

Failure by Photronics or Micron to comply or execute under any of these agreements, to capitalize on the use of existing technology or to further develop technology could result in a significant disruption to the Company's business and technology activities, and could adversely affect the Company's operations and cash flows.

**The Company has been dependent on sales to a limited number of large customers; the loss of any of these customers or any reduction in orders from these customers could have a material adverse effect on its sales and results of operations.**

Historically, the Company has sold a significant proportion of photomasks to a limited number of IC and FPD manufacturers. During fiscal 2009, one customer, Samsung Electronics Co., Ltd., accounted for approximately 19% of the Company's net sales. The Company's five largest customers, in the aggregate, accounted for 42% of net sales in fiscal 2009, 44% in fiscal 2008, and 43% in fiscal 2007. None of the Company's customers has entered into a long-term agreement with the Company requiring them to purchase the Company's products. The loss of a significant customer or any reduction or delay in orders from any significant customer, (including reductions or delays due to customer departures from recent buying patterns), or an unfavorable change in market, economic, or competitive conditions in the semiconductor or FPD industries, could have a material adverse effect on the Company's financial performance and business prospects. The continuing consolidation of semiconductor manufacturers and economic downturn in the semiconductor industry may increase the likelihood of losing a significant customer and have an adverse effect on the Company's financial performance and business prospects.

**The Company depends on a small number of suppliers for equipment and raw materials and, if the Company's suppliers do not deliver their products to them, the Company may be unable to deliver its products to its customers, which could adversely affect its business and results of operations.**

The Company relies on a limited number of photomask equipment manufacturers to develop and supply the equipment it uses. These equipment manufacturers currently require lead times of up to 12 months between the order and the delivery of certain photomask imaging and inspection equipment. The failure of such manufacturers to develop or deliver such equipment on a timely basis could have a material adverse effect on the Company's business and results of operations. Further, the Company relies on equipment manufacturers to develop future generations of manufacturing equipment to meet its requirements. In addition, the manufacturing equipment necessary to produce advanced photomasks could become prohibitively expensive.

The Company uses high precision quartz photomask blanks, pellicles, and electronic grade chemicals in its manufacturing processes. There are a limited number of suppliers of these raw materials and, for production of certain high-end photomasks, there is only one available supplier. The Company has no long-term contracts for the supply of these raw materials. Any delays or quality problems in connection with significant raw materials, particularly photomask blanks, could cause delays in shipments of photomasks, which could have a material adverse effect on the Company's business and results of operations. The fluctuation of foreign currency exchange rates with respect to prices of equipment and raw materials used in manufacturing also could have a material adverse effect on the Company's business and results of operations.

**The Company faces risks associated with complex manufacturing processes, including the use of sophisticated equipment and manufacturing processes with complex technologies. The inability of the Company to effectively utilize these processes and technologies could have a material adverse effect on its business and results of operations.**

The Company's complex manufacturing processes require the use of expensive and technologically sophisticated equipment and materials, and are continuously modified in an effort to improve manufacturing yields and product quality. Minute impurities, defects or other difficulties in the manufacturing process can lower manufacturing yields and make products unmarketable. Moreover, manufacturing leading-edge photomasks is more complex and time consuming than

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manufacturing less advanced photomasks, and may lead to delays in the manufacturing of all levels of photomasks. The Company has, on occasion, experienced manufacturing difficulties and capacity limitations that have delayed the Company's ability to deliver products within the time frames contracted for by its customers. The Company cannot provide assurance that it will not experience these or other manufacturing difficulties, or be subject to increased costs or production capacity constraints in the future, any of which could result in a loss of customers or could otherwise have a material adverse effect on its business and results of operations.

**The Company's debt agreements limit its ability to obtain financing and obligates the Company to repay debt.**

As of November 1, 2009, the Company had \$2.6 million outstanding under its revolving credit facility and \$27.2 million outstanding under its term loan agreement. The outstanding balance of the revolving credit facility was reduced by \$120.2 million during the quarter ended November 1, 2009, primarily with the net proceeds of the Company's 5.5% convertible notes and common stock offerings, and with cash from operations. On June 8, 2009, the Company entered into the aforementioned term loan agreement in the U.S. for \$27.2 million, which was used to repay outstanding foreign loans on June 12, 2009. Financial covenants related to these debts include, among others, a Senior Leverage Ratio, Total Leverage Ratio, Minimum Fixed Charge Ratio and minimum six-month EBITDA levels. Existing covenant restrictions limit the Company's ability to obtain additional debt financing and, should Photronics be unable to meet one or more of these covenants, the bank may require the Company to repay the outstanding balances prior to the expiration date of the agreements.

The Company's ability to comply with the financial and other covenants in its debt agreements may be affected by worsening economic or business conditions, or other events. Should the Company be unable to meet one or more of these covenants, lenders may require the Company to repay its outstanding balances prior to the expiration date of the agreements. The Company cannot assure that additional sources of financing will be available to pay off long-term borrowings to avoid default. Should the Company default on any of the long-term borrowings, a cross default would occur on other long-term borrowings, unless amended or waived.

**The Company's prior and future acquisitions may entail certain operational and financial risks.**

The Company has made significant acquisitions throughout its history. Acquisitions have focused on increasing its manufacturing presence in Asia, including its acquisition of Precision Semiconductor Mask Corporation, a Taiwanese photomask manufacturer, in 2000 and PK Ltd., a Korean photomask manufacturer, in 2001 and increasing its technology base through the MP Mask joint venture between Photronics and Micron in 2006. The Company may make additional acquisitions in the future. Acquisitions place significant demands on the Company's administrative, operational and financial personnel and systems. Managing acquired operations entails numerous operational and financial risks, including difficulties in the assimilation of acquired operations, diversion of management's attention from other business concerns, managing assets in multiple geographic regions, amortization of acquired intangible assets and potential loss of key employees of acquired operations. Sales of acquired operations also may decline following an acquisition, particularly if there is an overlap of customers served by the Company and the acquired operation, and these customers transition to another vendor in order to ensure a second source of supply. Furthermore, the Company may be required to utilize its cash reserves and/or issue new securities for future acquisitions, which could have a dilutive effect on its earnings per share.

**The Company's cash flow from operations and current holdings of cash may not be adequate for its current and long term needs.**

The Company's liquidity is highly dependent on its sales volume and the timing of its capital expenditures, (which can vary significantly from period to period), as it operates in a high fixed cost environment. Depending on conditions in the IC semiconductor and FPD market, the Company's cash flows from operations and current holdings of cash may not be adequate to meet the Company's current and long-term needs for capital expenditures, operations and debt repayments. Historically, in certain years the Company has used external financing to fund these needs. Due to conditions in the credit markets, some financing instruments used by the Company in the past may not be currently available to it. The Company is evaluating alternatives to increase its capital, delaying capital expenditures and evaluating further cost reduction initiatives. However, the Company cannot assure that additional sources of financing would be available to it on commercially favorable terms should its capital requirements exceed cash available from operations and existing cash, and cash available under its credit facility.

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**The Company may incur unforeseen charges related to its 2009 restructurings in China and the U.K. or, it may fail to realize projected benefits related to these or any other possible future facility closures or restructures.**

In order to lower its operating costs and increase its manufacturing efficiencies, the Company ceased the manufacture of photomasks at its facility in Manchester, U.K., in January 2009 and at its facility in Shanghai, China, in July 2009. However, the Company cannot assure that these actions will not result in unforeseen costs, disruptions in its operations, or other negative events that could result in its failing to realize the projected benefits of these restructures.

The Company also cannot assure that there will not be additional facility closures or other restructurings in the near or long term, nor can it assure that it will not incur significant charges should there be any additional future facility closures or restructures.

**The Company operates in a highly competitive industry; should the Company be unable to meet its customers' requirements for product quality, timeliness of delivery or technical capabilities, it could adversely affect the Company's sales.**

The photomask industry is highly competitive, and most of the Company's customers utilize more than one photomask supplier. The Company's competitors include Compugraphics, Inc., Dai Nippon Printing Co., Ltd., Hoya Corporation, SK-Electronics Co., Ltd., Taiwan Mask Corporation, Toppan Printing Co., Ltd. and Toppan Chungwha Electronics Corporation. The Company also competes with semiconductor manufacturers' captive photomask manufacturing operations, some of which market their photomask manufacturing services to outside customers. The Company expects to face continued competition from these and other suppliers in the future. Many of the Company's competitors have substantially greater financial, technical, sales, marketing and other resources than it does. Also, when producing smaller geometry photomasks, some of the Company's competitors may be able to more rapidly develop, produce, and achieve higher manufacturing yields than the Company. The Company believes that consistency of product quality and timeliness of delivery, as well as price, technical capability, and service, are the principal factors considered by customers in selecting their photomask suppliers. The Company's inability to meet these requirements could have a material adverse effect on its business and results of operations. In the past, competition led to pressure to reduce prices which, the Company believes, contributed to the decrease in the number of independent manufacturers. This pressure to reduce prices may continue in the future.

**The Company's substantial international operations are subject to additional risks.**



International sales accounted for approximately 72% of the Company's net sales for fiscal 2009, 77% in fiscal 2008, and 75% in fiscal 2007. The Company believes that maintaining significant international operations requires it to have, among other things, a local presence in the markets in which it operates. This requires significant investments of financial, managerial, operational, and other resources. Since 1996, the Company has significantly expanded its operations in international markets by acquiring existing businesses in Europe, establishing a manufacturing operation in Singapore, acquiring majority equity interests in photomask manufacturing operations in Korea and Taiwan and building a new manufacturing facility for FPD photomasks in Taiwan. As the served market continues to shift to Asia, the Company will continue to assess its manufacturing base and may close or open new facilities to adapt to these market conditions.

Operations outside the United States are subject to inherent risks, including fluctuations in exchange rates, political and economic conditions in various countries, unexpected changes in regulatory requirements, tariffs and other trade barriers, difficulties in staffing and managing international operations, longer accounts receivable payment cycles and potentially adverse tax consequences. These factors may have a material adverse effect on the Company's ability to generate sales outside the United States and, consequently, on its business and results of operations.

**Changes in foreign currency exchange rates could materially, adversely affect the Company's business, results of operations, or financial condition.**

The Company's financial statements are prepared in accordance with accounting principals generally accepted in the United States of America (U.S. GAAP) and are reported in U.S. dollars. The Company's international operations have transactions and balances denominated in currencies other than the U.S. dollar, primarily the Korean won, New Taiwan dollar, Japanese yen, Singapore dollar, euro, British pound and Chinese renminbi. In fiscal 2009, the Company recorded a net loss of \$3.1 million in its statement of operations from changes in foreign currency rates, while its net assets were increased by \$10.7 million as a result of the translation of foreign currency financial statements to U.S. dollars. In the event of significant foreign currency fluctuations, the Company's results of operations, financial condition or cash flows may be adversely affected.

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**The Company's business depends on managerial and technical personnel, who are in great demand, and its inability to attract and retain qualified employees could adversely affect the Company's business and results of operations.**

The Company's success, in part, depends upon key managerial, engineering and technical personnel, as well as its ability to continue to attract and retain additional personnel. The loss of certain key personnel could have a material, adverse effect upon the Company's business and results of operations. There can be no assurance that the Company can retain its key managerial, and technical employees, or that it can attract similar additional employees in the future. The Company believes that it provides competitive compensation and incentive packages to its employees.

**The Company may be unable to enforce or defend its ownership and use of proprietary technology, and the utilization of unprotected Company developed technology by its competitors could adversely affect the Company's business, results of operations and financial position.**

The Company believes that the success of its business depends more on its proprietary technology, information and processes, and know-how than on its patents or trademarks. Much of its proprietary information and technology relating to manufacturing processes is not patented and may not be patentable. The Company cannot offer assurance that:

- \* it will be able to adequately protect its technology;
- \* competitors will not independently develop similar technology; or
- \* international intellectual property laws will adequately protect its intellectual property rights.

The Company may become the subject of infringement claims or legal proceedings by third parties with respect to current or future products or processes. Any such claims, with or without merit, or litigation to enforce or protect its intellectual property rights or to defend itself against claimed infringement of the rights of others could result in substantial costs, diversion of resources, and product shipment delays or, could force the Company to enter into royalty or license agreements rather than dispute the merits of these claims. Any of the foregoing could have a material, adverse effect on the Company's business, results of operations and financial position.

**The Company may be unprepared for changes to environmental laws and regulations and may incur liabilities arising from environmental matters.**

The Company is subject to numerous environmental laws and regulations that impose various environmental controls on, among other things, the discharge of pollutants into the air and water and the handling, use, storage, disposal and clean-up of solid and hazardous wastes. Changes in these laws and regulations may have a material, adverse effect on the Company's financial position and results of operations. Any failure by the Company to adequately comply with these laws and regulations could subject it to significant future liabilities.

In addition, these laws and regulations may impose clean-up liabilities on current and former owners and operators of real property, without regard to fault, so that these liabilities may be joint and several with other parties. In the past, the Company has been involved in remediation activities relating to its properties. The Company believes, based upon current information, that environmental liabilities relating to these activities or other matters are not material to its financial statements. However, there can be no assurances that the Company will not incur any material environmental liabilities in the future.

**The Company's production facilities could be damaged or disrupted by a natural disaster or labor strike, either of which could adversely affect its financial position, results of operations and cash flows.**

The Company's facilities in Taiwan are located in a seismically active area. In addition, a major catastrophe such as an earthquake or other natural disaster, labor strikes, or work stoppage at any of the Company's manufacturing facilities could result in a prolonged interruption of its business. Any disruption resulting from these events could cause significant delays in shipments of the Company's products and the loss of sales and customers, which could have a material, adverse effect on the Company's financial position, results of operations, and cash flows.

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**The Company's sales can be impacted by the health and stability of the general economy, which could adversely affect its operations and cash flows.**

The global recession and other unfavorable changes in general economic conditions in the U.S. or other countries in which the Company does business may have the effect of reducing the demand for photomasks. For example, an economic downturn may lead to a decrease in demand for end products whose manufacturing process involves the use of photomasks, which may result in a reduction in new product design and development by semiconductor manufacturers, which could adversely affect the Company's operations and cash flows.

**Changes in the Company's credit standing could adversely affect its financial position.**

The Company's ability to raise debt capital can be materially influenced by acquisitions, dispositions, other investment decisions, and the results of its operations in the near-term. Should the Company's credit standing decline, its cost and ability to raise needed working and investment capital could adversely affect its results of operations and cash flows.

**Additional taxes could adversely affect the Company's financial results.**

The Company's tax filings are subjected to audit by tax authorities in the various jurisdictions in which it does business. These audits may result in assessments of additional taxes that are subsequently resolved with the authorities or through the courts. Currently, the Company believes there are no outstanding assessments whose resolution would result in a material adverse financial result. However, the Company cannot offer assurances that unasserted or potential future assessments would not have a material, adverse effect on its financial condition or results of operations.

**The Company's business could be adversely impacted by global or regional catastrophic events.**

The Company's business could be adversely affected by terrorist acts, major natural disasters, widespread outbreaks of infectious diseases, or the outbreak or escalation of wars, especially in the Asian region where the Company generates a significant portion of its international sales. Such events in the geographic regions in which the Company does business, including political tensions within the Korean Peninsula where a major portion of the Company's foreign operations are located, could have material, adverse impacts on its sales volume, cost of raw materials, earnings, cash flows and financial condition.

**The fair value of certain warrants issued on the Company's common stock is subject to fluctuations with the market price of the Company's common stock, and may have a material, adverse effect on the Company's results of operations.**

On May 15, 2009, in connection with an amendment to the Company's credit facility, Photronics issued 2.1 million warrants to purchase the Company's common stock, approximately 0.8 million of which were outstanding at November 1, 2009. As a result of certain net cash settleable put provisions, the warrants were recorded as a liability during fiscal 2009 and are subsequently being reported at fair value. The warrants are each exercisable for one share of common stock and have an exercise price of \$0.01. Therefore, changes in the market price of the Company's common stock could result in a significant change in the fair value of the warrants, which would result in a charge or credit to other income (expense) in the Company's statements of operations. During the period that the warrants were outstanding in fiscal 2009, the market price of the Company's common stock increased, which resulted in a non-cash loss of \$0.3 million. Changes in the market price of the Company's common stock may continue to have a material adverse effect on the Company's results of operations on a non-cash basis.

**Certain warrants issued by the Company include a "put" provision, giving the holders the option to sell the warrants to the Company at approximately the market price of the Company's common stock, which may have a material adverse effect on the Company's cash flows.**

The warrants discussed above include a put provision which may be exercised from May 15, 2012 through the expiration of the warrants on May 15, 2014. The put provision is only exercisable if the Company's common stock is not traded on a national exchange or if the Company's credit facility, which matures on January 31, 2011, has not been paid in full by another financing facility (new credit facility, debt and/or an equity securities, or capital contributions) or with other funds. As of November 1, 2009, approximately 768,000 warrants were outstanding that include a put provision. The purchase of a significant amount of the Company's common stock by Photronics under the put provision may have a material adverse effect on the Company's cash flows.

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**Servicing the Company's debt requires a significant amount of cash, and the Company may not have sufficient cash flow from its operations to pay its indebtedness.**

The Company's ability to make scheduled payments of the principal and interest or to refinance its indebtedness depends on its future performance, which is subject to economic, financial, competitive and other factors beyond the Company's control. The Company's business may not continue to generate sufficient cash flow from operations in the future to service its debt and make necessary capital expenditures. If the Company is unable to generate such cash flow, it may be required to adopt one or more alternatives, such as selling assets, restructuring

debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. The Company's ability to refinance its indebtedness will depend on the capital markets and the Company's financial condition at such time. The Company may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on its debt obligations.

## ITEM 1B. UNRESOLVED STAFF COMMENTS

None

## ITEM 2. DESCRIPTION OF PROPERTY

The following table presents certain information about the Company's photomask manufacturing facilities:

<u>Location</u>	<u>Type of Interest</u>
Allen, Texas	Owned
Boise, Idaho	Leased
Brookfield, Connecticut	Owned
Bridgend, South Wales	Leased
Cheonan, Korea	Owned
Dresden, Germany	Leased
Hsinchu, Taiwan	Leased
Shanghai, China	Owned (1) (2)
Singapore	Leased
Taichung, Taiwan	Owned (1)

(1) The Company owns its manufacturing facilities in Shanghai and Taichung, however, it leases the related land.

(2) Production at the Shanghai, China facility ceased in July 2009.

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The Company believes that its existing manufacturing facilities are suitable and adequate for its present purposes. The Company also leases various sales offices. The Company's administrative headquarters are located in Brookfield, Connecticut in a building that it owns.

## ITEM 3. LEGAL PROCEEDINGS

The Company is subject to various claims that arise in the ordinary course of business. The Company believes such claims, individually or in the aggregate, will not have a material adverse effect on the business of the Company.

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

No matters were submitted to a vote of the Company's security holders during the fourth quarter of fiscal 2009.

## PART II

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

The Common Stock of the Company is traded on the NASDAQ Global Select Market ("NASDAQ") under the symbol PLAB. The table below shows the range of high and low sale prices per share for each quarter for fiscal year 2009 and 2008, as reported by NASDAQ.

	<u>High</u>	<u>Low</u>
<b>Fiscal Year Ended November 1, 2009:</b>		
Quarter Ended February 1, 2009	\$ 2.15	\$0.33
Quarter Ended May 3, 2009	1.82	0.65
Quarter Ended August 2, 2009	5.46	1.53
Quarter Ended November 1, 2009	5.49	4.00
<b>Fiscal Year Ended November 2, 2008:</b>		
Quarter Ended January 27, 2008	\$13.10	\$8.91
Quarter Ended April 27, 2008	12.87	8.44
Quarter Ended July 27, 2008	11.16	4.40
Quarter Ended November 2, 2008	4.74	0.39

On December 29, 2009, the closing sale price for the Common Stock as reported by NASDAQ was \$4.54. Based on information available to the Company, the Company believes it has approximately 5,900 shareholders.

The Company has not paid any cash dividends to date and, for the foreseeable future, anticipates that earnings will continue to be retained for use in its business. Further, the Company's revolving credit facility ("credit facility") precludes it from paying cash dividends.

The information regarding the Company's equity compensation required to be disclosed by Item 201(d) of Regulation S-K is incorporated by reference from the Company's 2010 definitive Proxy Statement into Item 12 of Part III of this report.

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## ITEM 6. SELECTED FINANCIAL DATA

The following selected financial data is derived from the Company's audited consolidated financial statements. The data should be read in conjunction with the audited consolidated financial statements and notes thereto and other financial information included elsewhere in this Form 10-K (in thousands, except per share amounts):

	Year Ended				
	November 1, 2009	November 2, 2008	October 28, 2007	October 29, 2006	October 30, 2005
<b>OPERATING DATA:</b>					
Net sales	\$361,353	\$422,548	\$421,479	\$454,875	\$440,770
Cost and expenses:					
Cost of sales	(304,282)	(349,841)	(321,958)	(307,851)	(295,649)
Selling, general and administrative	(41,162)	(55,167)	(61,507)	(62,215)	(54,295)
Research and development	(15,423)	(17,475)	(17,300)	(27,337)	(32,152)
Consolidation, restructuring and related charges	(13,557) (a)	(510) (d)	-	(15,639) (g)	-
Impairment of long-lived assets	(1,458) (b)	(66,874) (e)	-	-	-
Impairment of goodwill	-	(138,534) (f)	-	-	-
Gains on sales of facilities	2,034	-	2,254	-	-
Operating income (loss)	(12,495)	(205,853)	22,968	41,833	58,674
Other income (expense):					
Interest expense	(22,401)	(11,878)	(5,928)	(11,916)	(10,885)
Investment and other income (expense), net	(2,208) (c)	5,562	6,844	15,469	7,556 (h)
Income (loss) before income tax benefit (provision) and minority interest	(37,104)	(212,169)	23,884	45,386	55,345
Income tax benefit (provision)	(4,323)	2,778	3,178	(10,462)	(10,058)
Minority interest in income of consolidated subsidiaries	(483)	(1,374)	(2,539)	(5,592)	(6,634)
Net income (loss)	\$(41,910) (a) (b) (c)	\$(210,765) (d) (e) (f)	\$24,523	\$29,332 (g)	\$38,653 (h)
Earnings (loss) per share:					
Basic	\$(0.97) (a) (b) (c)	\$(5.06) (d) (e) (f)	\$0.59	\$0.71 (g)	\$1.09 (h)
Diluted	\$(0.97) (a) (b) (c)	\$(5.06) (d) (e) (f)	\$0.56	\$0.66 (g)	\$0.95 (h)
Weighted average number of common shares outstanding:					
Basic	43,210	41,658	41,539	41,369	35,519
Diluted	43,210	41,658	51,282	51,072	45,256

**BALANCE SHEET DATA**

	As of				
	November 1, 2009	November 2, 2008	October 28, 2007	October 29, 2006	October 30, 2005
Working capital	\$ 89,542	\$ 66,419	\$ 96,606	\$ 127,691	\$300,557
Property, plant and equipment, net	347,889	436,528	531,578	443,637	412,429
Total assets	663,656	758,007	1,059,780	1,045,683	945,729
Long-term debt	112,137	202,979	191,253	170,288	238,949
Shareholders' equity	399,755	382,782	654,284	614,282	561,875

- (a) Includes consolidation and restructuring charges of \$13.6 million (\$12.9 million net of tax) in connection with the closures of the Company's Shanghai, China, and Manchester, U.K. manufacturing facilities.
- (b) Includes impairment charge of \$1.5 million (\$1.1 million net of tax) related to the Company's Manchester, U.K. manufacturing facility.
- (c) Includes non-cash mark-to-market charge of \$0.3 million net of tax in connection with warrants issued to purchase the Company's common stock.
- (d) Includes consolidation and restructuring charges of \$0.5 million (\$0.4 million net of tax) in connection with the closure of the Company's Manchester, U.K. manufacturing facility.
- (e) Includes impairment charge of \$66.9 million (\$60.9 million net of tax) for certain long-lived assets in Asia and Europe.
- (f) Includes impairment of goodwill charge of \$138.5 million (\$137.3 million net of tax).
- (g) Includes consolidation and restructuring charges of \$15.6 million net of tax in connection with the closure of the Company's Austin, Texas manufacturing and research and development facility.
- (h) Includes early extinguishment charge of \$1.7 million in connection with the early redemption of \$64.4 million of the Company's 4.75% convertible notes.

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

**Results of Operations for the Years Ended November 1, 2009, November 2, 2008 and October 28, 2007**

**Overview**

The Company sells substantially all of its photomasks to semiconductor designers and manufacturers, and manufacturers of FPDs. Photomask technology is also being applied to the fabrication of other higher performance electronic products such as photonics, micro-electronic mechanical systems and certain nanotechnology applications. Thus, the Company's selling cycle is tightly interwoven with the development and release of new semiconductor designs and flat panel applications, particularly as it relates to the semiconductor industry's migration to more advanced design methodologies and fabrication processes. The Company believes that the demand for photomasks primarily depends on design activity rather than sales volumes from products produced using photomask technologies. Consequently, an increase in semiconductor or FPD sales does not necessarily result in a corresponding increase in photomask sales. In addition, the reduced use of customized ICs, reductions in design complexity, other changes in the technology or methods of manufacturing or designing semiconductors, or a slowdown in the introduction of new semiconductor or FPD designs could reduce demand for photomasks even if demand for semiconductors and FPDs increases. Advances in semiconductor and photomask design and semiconductor production methods could reduce the demand for photomasks. Historically, the semiconductor industry has been volatile, with sharp periodic downturns and slowdowns. These downturns have been characterized by, among other things, diminished product demand, excess production capacity and accelerated erosion of selling prices. The semiconductor industry experienced a downturn in 2008 that continued into 2009, which had a negative impact on the Company's 2009 operating results. The Company's 2009 operating results were also negatively impacted by the global recession, which could also impact the Company's 2010 operating results.

The global semiconductor industry is driven by end markets which have been closely tied to consumer driven applications of high performance semiconductor devices including, but not limited to, communications and mobile computing solutions. The Company is typically required to fulfill its customer orders within a short period of time, sometimes within 24 hours. This results in the Company having a minimal level of back-log orders, typically one to two weeks. The Company cannot predict the timing of the industry's transition to volume production of next generation technology nodes or the timing of up and down cycles with precise accuracy, but believes that such transitions and cycles will continue into the future, beneficially and adversely affecting its business, financial condition and operating results in the near term. The Company's ability to remain successful in these environments is based upon achieving its goals of being a service and technology leader, an efficient solutions supplier, and a company able to continually reinvest in its global infrastructure.

The effects of the worsening global economy and the tightening credit market are also making it increasingly difficult for the Company to obtain external sources of financing to fund its operations. The Company faces challenges in the current and near term that require it to continue to make significant improvements in its competitiveness. The Company continues to evaluate financing alternatives, delay capital expenditures and evaluate further cost reduction initiatives.

The Company is focused on improving its competitiveness by advancing its technology and reducing costs. In addition, the Company increased its high-end manufacturing capability in 2008 with the commencement of production at its nanofab facility ("U.S. nanoFab") in Boise, Idaho. In order to lower its operating costs and increase its manufacturing efficiencies, the Company ceased the manufacture of photomasks at its facility in Manchester, U.K., in January 2009 and at its facility in Shanghai, China, in July 2009.

As of December 2009, state-of-the-art production for semiconductor masks is considered to be 45 nanometer and lower for ICs, and Generation 8 and above process technologies for FPDs, while 65 nanometer is currently in volume production. Currently, however, 90 nanometer and above geometries and Generation 7 and below process technologies for FPDs constitute the majority of designs being fabricated in volume today. The Company expects 65 nanometer designs to continue to move to wafer fabrication throughout fiscal 2010, and believes it is well positioned to service an increasing volume of this business through investments in manufacturing processes and technology in the global regions where its customers are located.

The photomask industry has been, and is expected to continue to be, characterized by technological change and evolving industry standards. In order to remain competitive, the Company will be required to continually anticipate, respond to, and utilize changing technologies. In particular, the Company believes that, as semiconductor geometries continue to become smaller, it will be required to manufacture even more complex optically-enhanced reticles, including optical proximity correction and phase-shift photomasks. Additionally, demand for photomasks has been, and could in the future be, adversely affected by changes in methods of semiconductor manufacturing (which could affect the type or quantity of photomasks utilized), such as changes in semiconductor demand that favor field-programmable gate arrays and other semiconductor designs that replace application-specific ICs. Furthermore, increased market acceptance of alternative methods of transferring circuit designs onto semiconductor wafers, such as direct-write lithography, could reduce or eliminate the need for photomasks. As of the end of fiscal 2009, direct-write lithography has not been proven to be a commercially viable alternative to photomasks, as it is considered too slow for high volume semiconductor wafer production, and the Company has not experienced a significant loss of revenue as a result of alternative semiconductor design methodologies. However, should direct-write or any other alternative methods of transferring IC designs to semiconductor wafers be done without the use of photomasks, the Company's business and results of operations would be materially, adversely affected. If the Company is unable to anticipate, respond to, or utilize these or other changing technologies due to resource, technological or other constraints, its business and results of operations could be materially adversely affected.

Both revenues and costs have been affected by the increased demand for high-end technology photomasks that require more advanced manufacturing capabilities but generally command higher average selling prices ("ASPs"). The Company's capital expenditure payments for new facilities and equipment aggregated approximately \$234 million for the three fiscal years ended November 1, 2009, resulting in significant increases in operating expenses. While the Company intends to continue to make the required investments to support the technological demands of its customers and position itself for future growth, its level of investment, when compared to recent years, decreased significantly in fiscal 2009, and the Company expects that its level of capital expenditures will continue at this reduced level for the next several years.

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The manufacture of photomasks for use in fabricating ICs and other related products built using comparable photomask-based process technologies has been, and continues to be, capital intensive due to the need to maintain a technology-based infrastructure. The Company's integrated global manufacturing network, which consists of nine manufacturing sites, and its employees represent a significant portion of its fixed operating cost base. Should sales volumes decrease based upon the flow of design releases from the Company's customers, the Company may have excess or underutilized production capacity that could significantly impact operating margins, or result in write-offs from asset impairments.

The vast majority of photomask units produced for the semiconductor industry employ geometries of 90 nanometers or larger for ICs, and Generation 7 technologies or lower for FPDs. At these geometries, the Company can produce full lines of photomasks and there is no significant technology employed by the Company's competitors that is not available to the Company. Semiconductor fabrication also occurs below 90 nanometer for ICs, and Generation 8 and above for FPDs.

In September 2009 the Company issued approximately 11.1 million shares of its common stock at a price of \$4.15 per share. Gross proceeds from the offering were \$46.0 million which were reduced by underwriting commissions and other expenses to yield net proceeds of approximately \$43.1 million. The net proceeds from the offering were used to reduce outstanding amounts under the Company's credit facility.

Also in September 2009 the Company issued \$57.5 million aggregate principal amount of 5.5% convertible senior notes which mature on October 1, 2014. Note holders may convert each \$1,000 principal amount of notes to 196.7052 shares of stock (equivalent to an initial

conversion price of approximately \$5.08 per share of common stock) on or before September 30, 2014. The conversion rate may be increased in the event of a make-whole fundamental change (as defined in the prospectus supplement filed by the Company on September 11, 2009) and the Company may not redeem the notes prior to their stated maturity date. The net proceeds of the offering were approximately \$54.9 million, which were used to reduce outstanding amounts under the Company's credit facility. Concurrent with the issuance of the 5.5% convertible senior notes, the Company issued warrants to Intel Capital Corporation to purchase a total of 750,000 shares of the Company's common stock, 500,000 of which were at an exercise price of \$4.15 per share and 250,000 at an exercise price of \$5.08 per share. The warrants expire on September 10, 2014, and were issued to Intel Capital Corporation, an affiliate of Intel Corporation, in consideration for an agreement between the Company and Intel Corporation to share technical and operations information regarding the development of the Company's products, the capabilities of the Company's photomask manufacturing lines and the alignment of photomask toolsets. Intel Capital Corporation also invested in the Company's convertible debt offering described above.

In the third quarter of 2009 the Company ceased the manufacture of photomasks at its Shanghai, China facility. Through the end of fiscal 2009, the Company recorded total restructuring charges related to this action of \$10.2 million, including \$9.9 million related to asset write-downs, primarily for the Shanghai manufacturing facility whose fair value was determined by management using a market approach. Approximately seventy-five employees were affected by this action. The total after-tax restructuring charge is expected to range between \$11 million to \$13 million through its completion in fiscal 2010.

In the first quarter of 2009 the Company ceased the manufacture of photomasks at its Manchester, U.K. facility and in connection therewith, restructuring charges (primarily for termination costs and asset write-downs) of \$3.3 million (\$2.7 million net of tax) were incurred in fiscal 2009. Approximately eighty-five employees were affected by this action.

In the third quarter of fiscal 2008, the Company recorded impairment charges of \$66.9 million for certain of its long-lived assets and wrote off all \$138.5 million of its goodwill (see Note 13 to the consolidated financial statements).

In the first quarter of 2008 a capital lease agreement commenced for the U.S. nanoFab facility. Quarterly lease payments, which bore interest at 8% were \$3.8 million through January 2013. This lease was cancelled in the third fiscal quarter of 2009, at which time the Company and Micron Technologies, Inc. (the lessor) entered into a new lease agreement for the facility. Under the provisions of the new lease agreement, quarterly lease payments were reduced from \$3.8 million to \$2.0 million, the term of the lease was extended from December 31, 2012 to December 31, 2014, and ownership of the property will not transfer to the Company at the end of the lease term. As a result of the new lease agreement, the Company reduced its lease obligation and the carrying value of its assets under capital leases by approximately \$28 million. The lease will continue to be accounted for as a capital lease until the end of its original lease term on December 31, 2012. For the additional two years of the new lease term, the lease will be accounted for as an operating lease. The U. S. nanoFab began production in the second quarter of 2008 and, through the end of fiscal 2009, the Company's total capital investment in the facility was approximately \$157 million.

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## Results of Operations

The following table represents selected operating information expressed as a percentage of net sales:

	Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
Net sales	100.0%	100.0%	100.0%
Cost of sales	(84.2)	(82.8)	(76.4)
Gross margin	15.8	17.2	23.6
Selling, general and administrative expenses	(11.4)	(13.1)	(14.6)
Research and development expenses	(4.3)	(4.1)	(4.1)
Consolidation, restructuring and related charges	(3.8)	(0.1)	-
Impairment of long-lived assets	(0.4)	(15.8)	-
Impairment of goodwill	-	(32.8)	-
Gains on sales of facilities	0.6	-	0.5
Operating income (loss)	(3.5)	(48.7)	5.4
Interest expense	(6.2)	(2.8)	(1.4)
Investment and other income (expense), net	(0.6)	1.3	1.6
Income (loss) before income tax benefit (provision) and minority interest	(10.3)	(50.2)	5.6
Income tax benefit (provision)	(1.2)	0.6	0.8
Minority interest	(0.1)	(0.3)	(0.6)
Net income (loss)	(11.6)%	(49.9)%	5.8%

Note: All the following tabular comparisons, unless otherwise indicated, are for the fiscal years ended November 1, 2009 (2009), November 2, 2008 (2008) and October 28, 2007 (2007), in millions of dollars.

### Net Sales

	2009	2008	2007	Percent Change	
				2008 to 2009	2007 to 2008
IC	\$272.9	\$314.9	\$339.4	(13.3)%	(7.2)%
FPD	88.5	107.6	82.1	(17.8)	31.1
Total net sales	\$361.4	\$422.5	\$421.5	(14.5)%	0.3 %

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Net sales for 2009 decreased 14.5% to \$361.4 million as compared to \$422.5 million for 2008. The decrease was primarily associated with the global recession which led to reduced demand for IC and FPD photomasks. Accordingly, sales of IC photomasks decreased by \$42.0 million, primarily related to decreases in both units and ASPs for mainstream photomasks, and FPD photomasks decreased by \$19.1 million, primarily related to decreased sales of high-end FPD photomasks. High-end photomask applications, which typically have higher ASPs, include photomask sets for IC products using 65 nanometer and below technologies and for FPD products using G7 and above technologies. During 2009, sales of high-end photomasks totaled \$77 million as compared to \$92 million in 2008. Total sales of high-end FPD photomasks decreased by \$22.0 million, while sales of high-end IC photomasks increased by \$7.0 million. By geographic area, net sales in 2009 as compared to 2008 decreased by \$36.1 million or 13.9% in Asia, increased by \$3.0 million or 3.1% in North America, and decreased by \$28.0 million or 42.3% in Europe. As a percent of total sales in 2009, sales were 62% in Asia, 28% in North America and 10% in Europe.

Net sales for 2008 increased 0.3% to \$422.5 million as compared to \$421.5 million for 2007. The increase is related to increased sales of FPD photomasks of \$25.5 million, primarily related to increased sales of high-end FPD photomasks; substantially offset by reduced sales of IC photomasks of \$24.5 million associated with decreased units and ASPs for mainstream photomasks. During 2008, sales of high-end photomasks totaled \$92 million. By geographic area, net sales in 2008 as compared to 2007 increased by \$16.5 million or 6.8% in Asia, decreased by \$10.4 million or 9.7% in North America, and decreased by \$5.0 million or 7.0% in Europe. As a percent of total sales in 2008, sales were 61% in Asia, 23% in North America and 16% in Europe.

### Gross Margin

	2009	2008	2007	Percent Change	
				2008 to 2009	2007 to 2008
Gross margin	\$57.1	\$72.7	\$99.5	(21.5)%	(26.9)%
Gross margin %	15.8%	17.2%	23.6%	-	-

Gross margin percentage decreased to 15.8% in 2009 from 17.2% in 2008, primarily as a result of a year-over-year decrease in net sales. The Company operates in a high fixed cost environment and, to the extent that the Company's revenues and utilization increase or decrease, gross margin will be positively or negatively impacted.

Gross margin percentage decreased to 17.2% in 2008 from 23.6% in 2007 primarily due to costs relating to the Company's increased manufacturing base, including costs associated with the U.S. nanoFab which commenced operations in the second fiscal quarter of 2008, and reduced ASPs for IC photomasks, principally mainstream. The decreased gross margin was partially mitigated by increased high-end revenues, primarily for FPD photomasks.

### Selling, General and Administrative Expenses

	2009	2008	2007	Percent Change	
				2008 to 2009	2007 to 2008
S,G&A expense	\$41.2	\$55.2	\$61.5	(25.4)%	(10.3)%
% of net sales	11.4%	13.1%	14.6%	-	-



Selling, general and administrative expenses decreased by \$14.0 million to \$41.2 million in 2009, compared with \$55.2 million in 2008. The decrease was primarily related to reduced compensation costs (due in part, to reduced employee head count), cost reduction programs and to certain U.S. nanoFab costs reported in selling, general and administrative expenses (prior to its commencing production in Q2-08).

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Selling, general and administrative expenses decreased by \$6.3 million or 10.3% to \$55.2 million in 2008, as compared to \$61.5 million in 2007. The decrease was related to certain U.S. nanoFab costs reported in costs of sales since production commenced in the second quarter of fiscal 2008, and reduced compensation expense, due in part to reduced headcount and cost reduction programs.

### **Research and Development**

	2009	2008	2007	Percent Change	
				2008 to 2009	2007 to 2008
R&D expense	\$15.4	\$17.5	\$17.3	(11.7)%	1.0%
% of net sales	4.3%	4.1%	4.1%	-	-

Research and development expenditures consist primarily of global development efforts of high-end process technologies for advanced sub-wavelength reticle solutions for IC and FPD technologies. Research and development expenses decreased in 2009 as compared to 2008 primarily due to reduced advanced development activity, principally in Asia, as a result of a downturn in the semiconductor industry in fiscal 2009.

### **Consolidation, Restructuring and Related Charges**

In the third quarter of fiscal 2009, the Company ceased the manufacture of photomasks at its Shanghai, China facility. In connection with this restructuring, the Company recorded a total restructure charge of \$10.2 million in fiscal 2009, primarily comprised of impairments of the facility and manufacturing equipment. Approximately 75 employees are expected to be affected by this restructuring. The Company expects the total after tax cost of this restructure to range between \$11 million to \$13 million through its completion in fiscal 2010. The Company is currently in negotiations to sell its Shanghai, China facility.

In the first quarter of fiscal 2009, the Company ceased the manufacture of photomasks at its Manchester, U.K. facility. This initiative began with the recording of a \$0.5 million charge for the impairment of certain long-lived assets at the facility in the fourth quarter of fiscal 2008, and includes additional charges of \$3.3 million incurred in fiscal 2009, primarily for employee termination costs and asset write-downs. Approximately 85 employees were affected by this plan. The total after tax cost of this restructure, which was completed in fiscal 2009, was \$3.0 million.

The Company continues to assess its global manufacturing strategy as its sales volume is dependent upon customer requirements which have become more concentrated in Asia and to a lesser extent in the U.S. This ongoing assessment could result, in the future, in facilities closures, asset redeployment, workforce reductions, and the addition of increased manufacturing facilities, all of which would be predicated by market conditions and customer requirements.

### **Impairment of Long-Lived Assets**

In the second quarter of fiscal 2009, the Company recorded an impairment charge of \$1.5 million to reduce the carrying value of its Manchester, U.K. facility to its estimated fair value, which was determined by management using a market approach.

As a result of the Company's projected undiscounted future cash flows related to certain of its asset groups (located in Europe and Asia) being less than the carrying value of those assets, the Company recorded an impairment charge of \$66.9 million in the third quarter of fiscal 2008. The carrying value of the assets determined to be impaired were reduced to their fair values, determined based upon market conditions, the income approach which utilized cash flow projections, and other factors.

### **Impairment of Goodwill**

Through the third quarter of fiscal 2008, the Company experienced a sustained, significant decline in its stock price. As a result of the decline in stock price, the Company's market capitalization fell significantly below the recorded value of its consolidated net assets during the third quarter of fiscal 2008. Due to the decrease in its market capitalization and quarterly net losses incurred through the third quarter of fiscal 2008, management tested the Company's goodwill for impairment. The results of the test indicated that there would be no remaining implied value attributable to the Company's goodwill and, accordingly, the Company wrote off all \$138.5 million of its goodwill in fiscal 2008.

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### **Gains on Sales of Facilities**

In September 2009, the Company sold its Manchester, U.K. manufacturing facility for \$4.3 million and realized a gain of \$2.0 million (\$1.5 million net of tax). In January 2007, the Company sold its Austin, Texas manufacturing and research and development facility for \$5.0 million and realized a gain of \$2.3 million.

#### **Other Income (Expense)**

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Interest expense	\$(22.4)	\$(11.9)	\$(5.9)
Investment and other income (expense), net	(2.2)	5.6	6.8
Total other income (expense)	<u>\$(24.6)</u>	<u>\$ (6.3)</u>	<u>\$ 0.9</u>

Interest expense increased in 2009 as compared to 2008 due to increased interest rates associated with increased borrowings on the Company's revolving credit facility coupled with higher interest rates and fees associated with bank amendments in fiscal 2009. The outstanding balance of the Company's variable rate debt was reduced substantially during the quarter ended November 1, 2009 with net proceeds from its common stock and convertible debt offerings. Investment and other income (expense), net decreased in 2009 as compared to 2008, primarily due to less favorable foreign currency transaction results.

Interest expense increased in 2008 as compared to 2007, primarily as a result of increased interest rates and increased outstanding debt balances. Investment and other income, net decreased in 2008 as compared to 2007, primarily due to reduced interest income associated with lower cash and investment balances, which were offset by increased foreign currency gains.

#### **Income Tax Benefit (Provision)**

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Income tax (provision) benefit	\$(4.3)	\$2.8	\$3.2
Effective income tax rate	(11.7)%	1.3%	13.3%

The income tax provision for the fiscal year ended November 1, 2009 was \$4.3 million or 11.7% of the loss before income taxes. The income tax (provision) benefit differs from the amount that would result from applying the federal statutory income tax rate of 35% to the Company's loss before income taxes primarily due to the Company's inability to realize a full income tax benefit in jurisdictions where valuation allowances were recorded.

In Korea, various investment tax credits have been utilized to reduce the Company's effective income tax rate. The Company's tax returns are subject to periodic examination by the tax authorities in the various jurisdictions in which it operates. The Company regularly assesses the potential outcomes of ongoing and future examinations and has provided accruals for tax contingencies.

The Company evaluates the recoverability of deferred tax assets from future taxable income and establishes valuation allowances if recovery is deemed not likely. The valuation allowance increased \$6.6 million and \$8.8 million in fiscal 2009 and 2008, respectively.

PKLT, the Company's FPD manufacturing facility in Taiwan, is accorded a tax holiday which expires in December 2012. In addition, the Company has been accorded a tax holiday in China which is expected to expire in 2011. The availability of these tax holidays did not have a significant impact on the Company's decision to increase its Asian presence which was in response to fundamental changes taking place in the semiconductor industry that the Company serves. These tax holidays had no dollar or per share effect on the 2009, 2008 or 2007 fiscal years. As semiconductor fabrication has migrated to Asia, in large part from the United States, the Company has followed, in order to avoid a severe loss of business.

#### **Minority Interest in Consolidated Subsidiaries**

Minority interest in consolidated subsidiaries, which represents the minority interest in earnings (losses) principally related to the Company's non-wholly owned subsidiary in Taiwan was \$0.5 million in fiscal year 2009 as compared to \$1.4 million in fiscal year 2008. The Company's ownership in its subsidiary in Taiwan was 58% at November 1, 2009 and November 2, 2008. The decrease in minority interest expense is primarily due to decreased net income of the Company's non-wholly owned subsidiary in Taiwan. The Company's ownership in its subsidiary in Korea was 99.7% at November 1, 2009 and November 2, 2008.

#### **Liquidity and Capital Resources**

<u>November 1, 2009</u>	<u>November 2, 2008</u>	<u>October 28, 2007</u>
<i>(in millions)</i>	<i>(in millions)</i>	<i>(in millions)</i>

Cash and cash equivalents	\$ 88.5	\$ 83.8	\$146.0
Short-term investments	0.2	1.3	5.7
Total	\$ 88.7	\$ 85.1	\$151.7
Net cash provided by operating activities	\$ 68.1	\$ 92.1	\$134.7
Net cash used in investing activities	\$(24.7)	\$(99.2)	\$(29.7)
Net cash used in financing activities	\$(40.5)	\$(47.7)	\$(89.8)

As of November 1, 2009 the Company had cash, cash equivalents and short-term investments of \$88.7 million compared to \$85.1 million as of November 2, 2008.

The Company's working capital increased \$23.1 million to \$89.5 million at the end of fiscal 2009, as compared to \$66.4 million at the end of fiscal 2008. The increase was primarily related to decreases in accounts payable resulting from reductions in obligations for accrued capital expenditures, and for a decrease in the current portion of long-term borrowings.

Cash provided by operating activities was \$68.1 million for fiscal 2009, as compared to \$92.1 million for fiscal 2008. This decrease was primarily due to increased losses as a result of reduced sales. Cash provided by operating activities was \$92.1 million for fiscal 2008, as compared to \$134.7 million for fiscal 2007. This decrease was primarily due to a net loss incurred in fiscal 2008 as compared to net income in fiscal 2007, and lower year-over-year accounts payable and accrued liability balances.

Cash used in investing activities in fiscal 2009 decreased to \$24.7 million, as compared to \$99.2 million in 2008, primarily due to capital expenditures decreasing year-over-year by \$70.1 million. Capital expenditures were higher in fiscal 2008 primarily relating to equipment for the U.S. nanoFab which began production in 2008. Capital expenditures for the 2009, 2008, and 2007 fiscal years were \$35.0 million, \$105.1 million and \$94.1 million, respectively. The Company expects capital expenditure payments for fiscal 2010 to be approximately \$45 million to \$55 million, primarily related to investment in high-end IC manufacturing capability. Cash used in investing activities in fiscal 2008 increased to \$99.2 million, as compared to \$29.7 million in 2007, primarily due to a year-over-year decrease in proceeds from the sale of short-term investments of \$62.5 million.

Cash used in financing activities was \$40.5 million in fiscal 2009, a decrease of \$7.2 million as compared to \$47.7 million in fiscal 2008, and is primarily comprised of \$133.7 million in net repayments of long-term borrowings. These repayments were primarily made with \$98 million in net proceeds from convertible debt and common stock offerings, with cash generated by operations of \$18 million and proceeds from the sale of the Manchester facility of \$4.3 million. Cash used in financing activities in 2008 was primarily related to the Company's redemptions of its \$150.0 million outstanding 2.25% convertible subordinated notes on April 15, 2008, offset in part by \$122.5 million net borrowings on its revolver. The decrease in cash used in financing activities in 2009 was primarily attributable to the decrease in the Company's payments to Micron.

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On June 6, 2007, the Company and a group of financial institutions entered into a credit agreement, which allows for borrowings under various currencies. In 2008 and 2009 the credit agreement was amended and on May 15, 2009 the maturity date of the agreement was changed from July 30, 2010 to January 31, 2011 and the aggregate commitment was amended and reduced to \$130 million. Per the credit agreement, the bank debt repayments primarily from the net proceeds of the convertible debt and common stock offerings, further reduced the aggregate commitment and as of November 1, 2009 the aggregate commitment was \$50 million. On January 31, 2010 the aggregate commitment will be further reduced to \$34 million. Amounts borrowed under the credit agreement are secured by substantially all of the Company's assets located in the United States as well as stock held by the Company of certain of its subsidiaries.

The cash interest rate on the outstanding debt balance is the greater of LIBOR or two percent, plus a spread, as defined. Fourth quarter 2009 payment-in-kind (PIK) interest, which accrues on the outstanding debt balance, is one percent and increases fifty basis points per quarter to a maximum of two and one-half percent. The PIK interest can be paid during the term of the credit facility or at maturity. In addition, the Company entered into a warrant agreement with its lenders for five percent (2.1 million shares) of its common stock. Forty percent of the warrants were exercisable upon issuance, with twenty percent increments exercisable after October 31, 2009, April 30, 2010, and October 31, 2010 at an exercise price of \$0.01 per share. Approximately 67,000 warrants were exercised since the warrants were issued. Provisions which allow the Company to cancel up to sixty percent of the outstanding warrants by early payment of defined amounts of the amended credit facility were effectuated during the fourth fiscal quarter of 2009 and, as of the end of fiscal 2009, 0.8 million of these warrants remained outstanding and exercisable. The warrant agreement also includes a net cash settleable put provision exercisable starting in May 2012 and a call provision exercisable starting in May 2013, both of which are exercisable only if the Company's common stock is not traded on a national exchange or if its credit facility, which matures on January 31, 2011, is not paid in full by another financing facility (new credit facility, debt and/or equity securities, or capital contributions) or with other funds. As a result of the aforementioned net cash settleable put provisions, the warrants were recorded as a liability (included in other liabilities) during the quarter ended August 2, 2009 and are subsequently being reported at their fair value.

In conjunction with the credit facility discussed above, the Company also entered into a term loan agreement in the U.S. dated June 8, 2009 with an aggregate commitment of \$27.2 million. The term loan has the same interest rate terms, maturity date and covenants as the credit facility discussed above. In June 2009, the Company borrowed \$27.2 million under the term loan and used the proceeds of this facility to repay the remaining outstanding balances of its foreign loans in China. Under the terms of the term loan agreement, \$9.1 million is due on January 31, 2010 and the remaining balance is due by January 31, 2011. It is the Company's intention to pay the \$9.1 million due on January 31, 2010

by utilizing funds available under its credit facility and, therefore, the Company has classified the \$9.1 million as a long-term borrowing as of November 1, 2009.

The credit facility's financial covenants include, among other items as defined: a Senior Leverage Ratio, Total Leverage Ratio, Minimum Fixed Charge Ratio, Maximum Capital Expenditures limitation, and a six-month minimum EBITDA covenant. Cash received as a result of certain defined events is required to be used to pay down the outstanding loan balance and reduce the available commitment of the credit facility by the same amount. In addition, the credit facility requires Minimum Unrestricted Cash Balances, as defined, at the end of each quarter. Should the Company default on any of its long-term borrowings, a cross default would occur on its other long-term borrowings, unless amended or waived.

On September 11, 2009 the Company sold, through a public offering, \$57.5 million aggregate principal amount of 5.5% convertible senior notes which mature on October 1, 2014. Note holders may convert each \$1,000 principal amount of notes to 196.7052 shares of stock (equivalent to an initial conversion price of approximately \$5.08 per share of common stock) on or before September 30, 2014. The conversion rate may be increased in the event of a make-whole fundamental change (as defined in the prospectus supplement) and the Company may not redeem the notes prior to their stated maturity date. The net proceeds of the offering were approximately \$54.9 million, which were used to reduce outstanding amounts under the Company's credit facility. Concurrent with the issuance of the 5.5% convertible senior notes, on September 11, 2009 the Company also sold, through a public offering, approximately 11.1 million shares of its common stock at a price of \$4.15 per share. Gross proceeds from the offering were \$46.0 million which were reduced by underwriting commissions and other expenses to yield net proceeds of approximately \$43.1 million. The net proceeds from the offering were used to reduce outstanding amounts under the Company's credit facility.

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Net proceeds of the Company's 5.5% convertible debt and common stock offerings of approximately \$98 million, cash from operations and proceeds from the sale of the Manchester, U.K. facility of \$4.3 million were used to reduce the amount of borrowings under the credit facility from \$122.5 million to its November 1, 2009 balance of \$2.6 million, which included the above mentioned PIK interest. As of November 1, 2009, the Company's available credit under its credit facility was \$50.0 million of which \$2.6 million was borrowed and \$47.4 million was unused and available. All borrowings under the credit facility are due on January 31, 2011.

On May 19, 2009, the Company entered into a new lease agreement with Micron (the lessor) for the U.S. nanoFab. Under the provisions of the new lease agreement, quarterly lease payments were reduced and, as compared to the prior lease agreement, resulted in cash savings for the Company of approximately \$6.5 million in fiscal 2009.

The Company's liquidity is highly dependent on its sales volume, cash conversion cycle, and the timing of its capital expenditures, as it operates in a high fixed cost environment. Depending on conditions in the IC semiconductor and FPD market, the Company's cash flows from operations and current holdings of cash may not be adequate to meet its current and long-term needs for capital expenditures, operations and debt repayments. Historically, in certain years the Company has used external financing to fund these needs. Due to conditions in the credit markets, some financing instruments used by the Company in the past may not be currently available to it. The Company is evaluating alternatives to increase its capital, delaying capital expenditures and evaluating further cost reduction initiatives. However, the Company cannot assure that additional sources of financing would be available to it on commercially favorable terms should its capital requirements exceed cash available from operations and existing cash, and cash available under its credit facility.

At November 1, 2009, the Company had outstanding purchase commitments of approximately \$42.0 million, which include approximately \$35.0 million related to capital expenditures, primarily for investment in high-end IC manufacturing capability. The Company intends to use its working capital and cash generated from operations to finance its capital expenditures.

### Cash Requirements

The Company's cash requirements in fiscal 2010 will be primarily to fund operations, including capital spending and debt service. The Company believes that its cash on hand, cash generated from operations and amounts available under its credit facility will be sufficient to meet its cash requirements for the next 12 months. The Company regularly reviews the availability and terms on which it might issue additional equity or debt securities in the public or private markets. However, the Company cannot assure that additional sources of financing would be available to the Company on commercially favorable terms should the Company's capital requirements exceed its cash available from operations, existing cash, and cash available under its credit facility.

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### Contractual Cash Obligations

The following table quantifies the Company's future contractual obligations as of November 1, 2009:

	Payments Due				
	Total	Less Than 1 Year	1 - 3 Years	3 - 5 Years	More Than 5 Years
Long-term borrowings	\$ 87.3	\$ -	\$29.8	\$57.5	\$ -

Operating leases	23.9	2.2	3.2	15.5	3.0
Capital leases	35.2	10.3	22.6	2.3	-
Unconditional purchase obligations	42.0	40.2	1.8	-	-
Interest	24.2	8.7	9.4	6.1	-
Total	<u>\$212.6</u>	<u>\$61.4</u>	<u>\$66.8</u>	<u>\$81.4</u>	<u>\$3.0</u>

As of November 1, 2009, the Company had recorded an accrual for tax contingencies of \$2.0 million which was not included in the above table due to the high degree of uncertainty regarding the timing of future payments relating to such liabilities, and it was not practical to determine a reasonably reliable estimate of the amount and period when such liabilities might be paid.

### Off-Balance Sheet Arrangements

Under the Operating Agreement relating to the MP Mask joint venture, through May 5, 2010, the Company may be required to make additional capital contributions to the joint venture of up to a maximum amount as defined in the Operating Agreement. Through the end of fiscal year 2009, the Company has contributed \$6.1 million to the joint venture, and has received two distributions from the joint venture totaling \$10.0 million.

### Stock-based Compensation

Total stock-based compensation expense for the year ended November 1, 2009 was \$2.1 million, as compared to \$2.6 million for the year ended November 2, 2008, substantially all of which is in selling, general and administrative expenses. No compensation cost was capitalized as part of inventory, and no income tax benefit has been recorded. As of November 1, 2009, total unrecognized compensation cost of \$3.0 million is expected to be recognized over a weighted-average amortization period of 3.0 years.

### Business Outlook

A majority of the Company's revenue growth has come from, and is expected to continue to come from, the Asian region as customers increase their use of manufacturing foundries located outside of North America and Europe. Additional revenue growth is also anticipated from North America and Europe as a result of utilizing technology licensed under the Company's technology license with Micron. The Company's Korean and Taiwanese operations are non-wholly owned subsidiaries; therefore a portion of earnings generated at each location is allocated to the minority shareholders.

The Company continues to assess its global manufacturing strategy and monitor its market capitalization, sales volume and related cash flows from operations. This ongoing assessment could result in future facilities closures, asset redeployments, additional impairments of intangible or long-lived assets, workforce reductions, or the addition of increased manufacturing facilities, all of which would be based on market conditions and customer requirements.

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The Company's future results of operations and the other forward-looking statements contained in this filing involve a number of risks and uncertainties. While various risks and uncertainties have been discussed, a number of other factors could cause actual results to differ materially from the Company's expectations.

### Application of Critical Accounting Procedures

The Company's consolidated financial statements are based on the selection and application of significant accounting policies, which require management to make significant estimates and assumptions. The Company believes that the following are some of the more critical judgment areas in the application of the Company's accounting policies that affect its financial condition and results of operations.

#### *Estimates and Assumptions*

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect amounts reported in them. Management bases its estimates on historical experience and on various assumptions that are believed to be reasonable under the circumstances. Significant accounting estimates include those used in the testing of long-lived assets for potential impairment, and those used in developing income tax provisions, allowances for uncollectible accounts receivable, inventory valuation allowances, restructuring reserves and valuation models. The Company's estimates are based on the facts and circumstances available at the time they are made. Changes in accounting estimates used are likely to occur from period to period, which may have a material impact on the presentation of the Company's financial condition and results of operations. Actual results reported by the Company may differ from such estimates. The Company reviews these estimates periodically and reflects the effect of revisions in the period in which they are determined.

#### *Fair Value of Financial Instruments*

The fair values of the Company's short-term and long-term investments and its 5.5% convertible senior notes are estimated by management based upon reference to quoted market prices and other available market information. The fair values of the Company's cash and cash equivalents, accounts receivable, accounts payable, certain other current assets and current liabilities, and variable rate borrowings approximate their carrying value due to their short-term maturities.

#### *Derivative Instruments and Hedging Activities*

The Company records derivatives in the consolidated balance sheets as assets or liabilities, measured at fair value. The Company does not engage in derivative instruments for speculative purposes. Gains or losses resulting from changes in the values of those derivatives are reported in the consolidated statements of operations, or as accumulated other comprehensive income, a separate component of shareholders' equity, depending on the use of the derivatives and whether they qualify for hedge accounting. In order to qualify for hedge accounting, among other criteria, the derivative must be a hedge of an interest rate, price, foreign currency exchange rate, or credit risk, expected to be highly effective at the inception of the hedge and be highly effective in achieving offsetting changes in the fair value or cash flows of the hedged item during the term of the hedge, and formally documented at the inception of the hedge. In general, the types of risks hedged are those relating to the variability of future cash flows caused by movements in foreign currency exchange and interest rates. The Company documents its risk management strategy and hedge effectiveness at the inception of, and during the term of each hedge.

#### *Property, Plant and Equipment*

Property, plant and equipment, except as explained below under "Impairment of Long-Lived Assets," are stated at cost less accumulated depreciation and amortization. Repairs and maintenance, as well as renewals and replacements of a routine nature are charged to operations as incurred, while those which improve or extend the lives of existing assets are capitalized. Upon sale or other disposition, the cost of the asset and accumulated depreciation are removed from the accounts, and any resulting gain or loss is reflected in operations.

Depreciation and amortization are computed using the straight-line method over the estimated useful lives of the related assets. Buildings and improvements are depreciated over 15 to 40 years, machinery and equipment over 3 to 10 years and furniture, fixtures and office equipment over 3 to 5 years. Leasehold improvements are amortized over the life

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of the lease or the estimated useful life of the improvement, whichever is less. Judgment and assumptions are used in establishing estimated useful lives and depreciation periods. The Company also uses judgment and assumptions as it periodically reviews property, plant and equipment for any potential impairment in carrying values whenever events such as a significant industry downturn, plant closures, technological obsolescence or other changes in circumstances indicate that their carrying amount may not be recoverable.

#### *Goodwill and Other Intangible Assets*

Intangible assets consist primarily of a technology license agreement, a supply agreement, acquisition-related intangibles, and prior to July 27, 2008, goodwill. These assets, except as explained below, are stated at fair value as of the date acquired less accumulated amortization. Amortization is calculated on a straight-line basis or another method that more fairly represents the utilization of the assets. The future economic benefit of the carrying values of intangible assets that are subject to amortization are tested for recoverability whenever events or changes in circumstances indicate the carrying value of an intangible asset may not be recoverable based on undiscounted cash flows or market factors, and an impairment loss would be recorded in the period so determined.

The Company tested goodwill for impairment annually and when an event occurred or circumstances changed that would more likely than not have reduced the fair value of a reporting unit below its carrying value. Goodwill was tested for impairment using a two-step process. In the first step, the fair value of the reporting unit was compared to its carrying value. For purposes of testing impairment, the Company is a single reporting unit. If the fair value of the reporting unit exceeded the carrying value of its net assets, goodwill was considered not impaired and no further testing was required. If the carrying value of the net assets exceeded the fair value of the reporting unit, a second step of the impairment test was performed in order to determine the implied fair value of a reporting unit's goodwill. Determining the implied fair value of goodwill required a valuation of the reporting unit's tangible and intangible assets and liabilities in a manner similar to the allocation of purchase price in a business combination. If the carrying value of the reporting unit's goodwill exceeded the implied fair value of its goodwill, goodwill was deemed impaired and was written down to the extent of the difference.

In connection with the Company's latest test, the Company wrote off all of its \$138.5 million of goodwill in its third fiscal quarter of 2008.

#### *Impairment of Long-Lived Assets*

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability is based on the Company's judgment and estimates of undiscounted future cash flows resulting from the use of the assets and their eventual disposition. Measurement of an impairment loss for long-lived assets and certain identifiable intangible assets that management expects to hold and use is based on the fair value of the assets.

The carrying values of the assets determined to be impaired are reduced to their estimated fair values. Fair values of the impaired assets would generally be determined using a market or income approach.

#### *Investment in Joint Venture*

Investments in joint ventures over which the Company has the ability to exercise significant influence and that, in general, are at least 20 percent owned are stated at cost plus equity in undistributed net income (loss) of the joint venture. An impairment loss would be recognized whenever a decline in the value of such an investment below its carrying amount is determined to be other than temporary. In judging "other than temporary," the Company would consider the length of time and extent to which the fair value of the investment has been less than the

carrying amount of the investment, the near-term and longer-term operating and financial prospects of the investee, and the Company's longer-term intent of retaining the investment in the investee.

### *Income Taxes*

The income tax (provision) benefit is computed on the basis of the various tax jurisdictions' income or loss before income taxes. Deferred income taxes reflect the tax effects of differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company uses judgment and assumptions to determine if valuation allowances for deferred income tax assets are required if realization is not likely

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by considering future market growth, forecasted operations, future taxable income, and the amounts of earnings in the tax jurisdictions in which it operates.

The Company considers income taxes in each of the tax jurisdictions in which it operates in order to determine its effective income tax rate. Current income tax exposure is identified and temporary differences resulting from differing treatments of items for tax and financial reporting purposes are assessed. These differences result in deferred tax assets and liabilities, which are included in the Company's consolidated balance sheets. Additionally, the Company evaluates the recoverability of deferred income tax assets from future taxable income and establishes valuation allowances if recovery is deemed not more likely than not. Accordingly, income taxes in the consolidated statements of operations are impacted by changes in the valuation allowance. Significant management estimates and judgment are required in determining any valuation allowance recorded against net deferred tax assets. The Company accounts for uncertain tax positions by recording a liability for unrecognized tax benefits resulting from uncertain tax positions taken, or expected to be taken, in its tax returns.

### *Revenue Recognition*

The Company recognizes revenue when there is persuasive evidence that an arrangement exists, delivery has occurred, the sales price is fixed or determinable, and collectibility is reasonably assured. The Company uses judgment when estimating the effect on revenue of discounts and product warranty obligations, both of which are accrued when the related revenue is recognized.

Warranties and Other Post Shipment Obligations - For a 30-day period, the Company warrants that items sold will conform to customer specification. However, the Company's liability is limited to repair or replacement of the photomasks at its sole option. The Company inspects photomasks for conformity to customer specifications prior to shipment. Accordingly, customer returns of items under warranty have historically been insignificant. However, the Company records a liability for the insignificant amount of estimated warranty returns based on historical experience. The Company's specific return policies include accepting returns for products with defects, or products that have not been produced to precise customer specifications. At the time of revenue recognition, a liability is established for these items.

Sales Taxes - The Company presents its revenues in the consolidated statements of operations net of sales taxes, if any (excluded from revenues).

### *Stock-based Compensation*

The Company adopted Statement of Financial Accounting Standards (SFAS) No. 123(R) "Share-Based Payment" (primarily codified under Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC 718)) on October 31, 2005, using the modified prospective method. Subsequently, compensation expense is recognized in the Company's consolidated statements of operations over the service period that the awards are expected to vest. The Company recognizes expense for all stock-based compensation with graded vesting granted on or after October 31, 2005 on a straight-line basis over the vesting period of the entire award. For awards with graded vesting granted prior to October 31, 2005, the Company recognized compensation cost over the vesting period following accelerated recognition as if each underlying vesting date represented a separate award. Stock-based compensation expense includes the estimated effects of forfeitures, which will be adjusted over the requisite service period to the extent actual forfeitures differ, or are expected to differ from such estimates. Changes in estimated forfeitures are recognized in the period of change and will also impact the amount of expense to be recognized in future periods. The Company adopted the alternative transition method provided in FASB Staff Position No. 123(R)-3 for calculating the tax effects of share-based compensation. Determining the appropriate option pricing model and calculating the grant date fair value of stock-based awards requires considerable judgment, including estimating stock price volatility and the expected term of options granted.

The Company uses the Black-Scholes option valuation model to value employee stock options. The Company estimates stock price volatility based on daily averages of its historical volatility over a term approximately equal to the grant's estimated option life. The expected term of options and forfeiture rate assumptions are derived from historical data.

### **Effect of New Accounting Standards**

In September 2009, the FASB issued Accounting Standards Update (ASU) No. 2009-13 which provides amended guidance for multiple-deliverable revenue arrangements. ASU No. 2009-13 changes the criteria for separating

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consideration in multiple-deliverable arrangements by establishing a selling price hierarchy for determining the selling price of a deliverable. Under ASU No. 2009-13, the selling price for each deliverable in a multiple-deliverable arrangement will, in order of preference and when available, be based on vendor specific objective evidence, third party evidence, or estimated selling price. ASU No. 2009-13 prescribes that

estimated selling price be determined in a manner that is consistent with that used to determine the price to sell the deliverable on a stand alone basis, and eliminates the residual method of allocation and requires that arrangement consideration be allocated at the inception of the arrangement to all deliverables using the relative selling price method. ASU No. 2009-13 also significantly expands the disclosures related to multiple-deliverable arrangements, and is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 2010 with early adoption permitted. The Company does not expect that the adoption of ASU No. 2009-13 will have a material impact on its consolidated financial statements.

In August 2009, the FASB issued ASU No. 2009-05 which provides amended guidance for the fair value measurement of liabilities. ASU No. 2009-05 clarifies, among other things, that in circumstances in which a quoted market price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using valuation techniques specified in the ASU. ASU No. 2009-05 was adopted by the Company on November 2, 2009. The adoption of ASU No. 2009-05 did not have a material impact on the Company's consolidated financial statements.

In June 2009 the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles - a replacement of FASB Statement No. 162" (primarily codified under ASC 105). With limited "grandfathered" exceptions, SFAS No. 168 establishes the FASB Accounting Standards Codification, along with rules and interpretative releases of the Securities and Exchange Commission, as being the sources of authoritative U.S. generally accepted accounting principles (GAAP) recognized by the FASB to be applied to SEC registrants. SFAS No. 168 also superseded SFAS No. 162 "The Hierarchy of Generally Accepted Accounting Principles" as all of the contents of the FASB Accounting Standards Codification carries the same level of authority, thereby modifying the hierarchy of GAAP to include only two levels: authoritative and non-authoritative. SFAS No. 168 is effective for financial statements issued for interim and annual periods ended after September 15, 2009. The Company adopted this guidance during the three month period ended November 1, 2009 and its adoption did not materially impact its consolidated financial statements.

In June 2009 the FASB issued SFAS No. 167, Amendments to FASB Interpretation No. 46(R) (primarily codified under ASC 810). SFAS No. 167 amends Interpretation 46(R) to require an enterprise to perform an analysis to determine whether its variable interest or interests give it a controlling financial interest in a variable interest entity. This analysis is to identify the primary beneficiary of the variable interest entity as being the enterprise that has certain characteristics described in SFAS No. 167. SFAS No. 167, in addition to other requirements, requires an enterprise to assess whether it has an implicit financial responsibility to ensure that a variable interest entity operates as designed when determining whether it has the power to direct the activities of the variable interest entity that most significantly impact the entity's financial performance and, mandates ongoing reassessments of whether an enterprise is the primary beneficiary of a variable interest entity. SFAS No. 167 is effective for financial statements issued for fiscal years beginning after November 15, 2009 and interim financial statements within those fiscal years. The Company is currently evaluating the impact, if any, this guidance will have on its consolidated financial statements.

In May 2008, the FASB issued FSP No. APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement) (codified under ASC 470)." FSP No. APB 14-1 requires that issuers of convertible debt instruments that may be settled in cash upon conversion separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP No. APB 14-1 is effective for fiscal years beginning after December 15, 2008 and interim periods within those fiscal years, and is required to be retrospectively applied. The Company adopted this guidance on November 2, 2009. Its adoption had no effect on the Company's consolidated financial statements.

In February 2008, the FASB issued FSP No. 157-2 "Effective Date of FASB Statement No. 157" (codified under ASC 820), which delayed the effective date of FASB Statement No. 157 "Fair Value Measurements" for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company elected to defer the application of SFAS No. 157 to any nonfinancial assets and nonfinancial liabilities to which it would apply. The deferral expires in the Company's first fiscal quarter of 2010, when the Company will adopt the deferred provisions of this guidance. The adoption of this guidance is not expected to have a material effect on the Company's consolidated financial statements.

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In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements - an amendment of Accounting Research Bulletin No. 51" (codified under ASC 810). SFAS No. 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. The Company adopted this guidance on November 2, 2009. Its adoption resulted in the reclassification of its \$49.9 million of minority interest in the consolidated balance sheet to equity.

In December 2007, the FASB issued SFAS No. 141(R), "Business Combinations" (codified under ASC 805). SFAS No. 141(R) establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. The statement also provides guidance for recognizing and measuring the goodwill acquired in the business combination and determines what information to disclose to enable users of the financial statement to evaluate the nature and financial effects of the business combination. SFAS No. 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company adopted this guidance on November 2, 2009. Its adoption had no effect on its consolidated financial statements.

## **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The Company records derivatives on the balance sheet as assets or liabilities, measured at fair value. The Company does not engage in derivative instruments for speculative purposes. Gains or losses resulting from changes in the values of those derivatives are reported in the condensed consolidated statement of operations, or as accumulated other comprehensive income, a separate component of shareholders' equity, depending on the use of the derivatives and whether they qualify for hedge accounting. In order to qualify for hedge accounting, among other criteria, the derivative must be a hedge for an interest rate, price, foreign currency exchange rate, or credit risk, expected to be highly effective at the inception of the hedge and be highly effective in achieving offsetting changes in the fair value or cash flows of the hedged item during the term of the hedge, and formally documented at the inception of the hedge. In general, the types of risks hedged are those relating to the



variability of future cash flows caused by movements in foreign currency exchange and interest rates. The Company documents its risk management strategy and hedge effectiveness at the inception of, and during the term of each hedge.

### Foreign Currency Exchange Rate Risk

The Company conducts business in several major international currencies through its worldwide operations and is subject to changes in foreign exchange rates of such currencies. Changes in exchange rates can positively or negatively affect the Company's sales, operating margins and retained earnings. The functional currencies of the Company's Asian subsidiaries are the Korean won, New Taiwan dollar, Singapore dollar and the Chinese renminbi. The functional currencies of the Company's European subsidiaries are the British pound, the euro.

The Company attempts to minimize its risk of foreign currency transaction losses by producing its products in the same country in which the products are sold (thereby generating revenues and incurring expenses in the same currency), and by managing its working capital. In some instances, the Company may sell or purchase products in a currency other than the functional currency of the country where it was produced. There can be no assurance that this approach will continue to be successful, especially in the event of a significant adverse movement in the value of any foreign currencies against the U.S. dollar. In recent years the Company experienced significant foreign exchange losses on these transactions in its statements of operations.

The Company's primary net foreign currency exposures as of November 1, 2009 included the Korean won, the Japanese yen, the Singapore dollar, the New Taiwan dollar, the British pound, the euro and the Chinese renminbi. As of November 1, 2009, a 10% adverse movement in the value of these currencies against the U.S. dollar would have resulted in a net unrealized pre-tax loss of \$4.8 million. The Company does not believe that a 10% change in the exchange rates of other non-U.S. dollar currencies would have a material effect on its consolidated financial position, results of operations, or cash flows.

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In April, 2006, the Company's Korean subsidiary entered into a foreign currency rate swap contract which, under the terms of the contract, effectively converted a \$50 million interest bearing intercompany loan denominated in U.S. dollars to Korean won. The intercompany loan was repaid and the related swap was settled during the year ended November 2, 2008.

### Interest Rate Risk

At November 1, 2009, the Company had \$29.8 million in variable rate borrowings, and cash and cash equivalents of \$82.6 million which bore interest at variable rates, resulting in approximately \$53 million in net variable rate financial assets at November 1, 2009 and approximately \$72 million in net variable rate financial liabilities at November 2, 2008 which were subject to interest rate risk. A 10% change in interest rates would not have had a material effect on the Company's consolidated financial position, results of operations, or cash flows in 2009 or 2008.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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**Board of Directors and Shareholders  
Photronics, Inc.  
Brookfield, Connecticut**

We have audited the accompanying consolidated balance sheets of Photronics, Inc. and subsidiaries (the "Company") as of November 1, 2009 and November 2, 2008 and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the three fiscal years ended November 1, 2009, November 2, 2008 and October 28, 2007. We also have audited the Company's internal control over financial reporting as of November 1, 2009, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting in Item 9A. Our responsibility is to express an opinion on these financial statements and an opinion on the Company's internal control over financial reporting based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

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

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Photronics, Inc. and subsidiaries as of November 1, 2009 and November 2, 2008, and the results of their operations and their cash flows for each of the three fiscal years ended November 1, 2009, November 2, 2008 and October 28, 2007, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of November 1, 2009, based on the criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

**/s/ Deloitte & Touche LLP  
Stamford, Connecticut  
January 7, 2010**

**PHOTRONICS, INC. AND SUBSIDIARIES**  
**Consolidated Balance Sheets**  
*(in thousands, except per share amounts)*

	<b>November 1, 2009</b>	<b>November 2, 2008</b>
	<hr/>	<hr/>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 88,539	\$ 83,763
Accounts receivable, net of allowance of \$2,669 in 2009 and \$2,788 in 2008	66,920	68,095
Inventories	14,826	17,548

Deferred income taxes	3,264	2,843
Other current assets	6,448	10,248
Total current assets	179,997	182,497
Property, plant and equipment, net	347,889	436,528
Investment in joint venture	60,945	65,737
Intangibles, net	55,054	62,386
Other assets	19,771	10,859
	<u>\$663,656</u>	<u>\$758,007</u>

#### LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:		
Current portion of long-term borrowings	\$ 10,301	\$ 20,630
Accounts payable	59,187	69,791
Accrued liabilities	20,967	25,657
Total current liabilities	90,455	116,078
Long-term borrowings	112,137	202,979
Deferred income taxes	1,487	1,813
Other liabilities	9,881	4,739
Total liabilities	213,960	325,609
Minority interest	49,941	49,616
Commitments and contingencies		
Shareholders' equity:		
Preferred stock, \$0.01 par value, 2,000 shares authorized, none issued and outstanding	-	-
Common stock, \$0.01 par value, 150,000 shares authorized, 53,011 shares issued and outstanding at November 1, 2009 and 41,712 shares issued and outstanding at November 2, 2008	530	417
Additional paid-in capital	432,160	384,502
Retained earnings (deficit)	(26,546)	15,364
Accumulated other comprehensive loss	(6,389)	(17,501)
Total shareholders' equity	399,755	382,782
	<u>\$663,656</u>	<u>\$758,007</u>

See accompanying notes to consolidated financial statements.

**PHOTRONICS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Operations**  
*(in thousands, except per share amounts)*

	<u>Year Ended</u>		
	<u>November 1, 2009</u>	<u>November 2, 2008</u>	<u>October 28, 2007</u>
Net sales	\$361,353	\$ 422,548	\$421,479
Cost and expenses:			
Cost of sales	(304,282)	(349,841)	(321,958)

Selling, general and administrative	(41,162)	(55,167)	(61,507)
Research and development	(15,423)	(17,475)	(17,300)
Consolidation, restructuring and related charges	(13,557)	(510)	-
Impairment of long-lived assets	(1,458)	(66,874)	-
Impairment of goodwill	-	(138,534)	-
Gains on sales of facilities	2,034	-	2,254
Operating income (loss)	(12,495)	(205,853)	22,968
Other income (expense):			
Interest expense	(22,401)	(11,878)	(5,928)
Investment and other income (expense), net	(2,208)	5,562	6,844
Income (loss) before income tax benefit (provision) and minority interest	(37,104)	(212,169)	23,884
Income tax benefit (provision)	(4,323)	2,778	3,178
Income (loss) before minority interest	(41,427)	(209,391)	27,062
Minority interest in income of consolidated subsidiaries	(483)	(1,374)	(2,539)
Net income (loss)	<u>\$(41,910)</u>	<u>\$(210,765)</u>	<u>\$ 24,523</u>
Income (loss) per share:			
Basic	<u>\$(0.97)</u>	<u>\$(5.06)</u>	<u>\$0.59</u>
Diluted	<u>\$(0.97)</u>	<u>\$(5.06)</u>	<u>\$0.56</u>
Weighted average number of common shares outstanding:			
Basic	<u>43,210</u>	<u>41,658</u>	<u>41,539</u>
Diluted	<u>43,210</u>	<u>41,658</u>	<u>51,282</u>

See accompanying notes to consolidated financial statements.

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**PHOTRONICS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Shareholders' Equity**  
**Years Ended November 1, 2009, November 2, 2008 and October 28, 2007**  
*(in thousands)*

	<u>Accumulated Other Comprehensive Income (Loss)</u>									
	<u>Common Stock</u>	<u>Add'l</u>	<u>Retained</u>	<u>Unrealized</u>	<u>Cash</u>	<u>Foreign</u>			<u>Share-</u>	
	<u>Shares</u>	<u>Amount</u>	<u>Capital</u>	<u>Earnings</u>	<u>Investment</u>	<u>Flow</u>	<u>Currency</u>	<u>Other</u>	<u>Total</u>	<u>holders'</u>
				<u>(Deficit)</u>	<u>Gains</u>	<u>Hedges</u>	<u>Translation</u>			<u>Equity</u>
<b>Balance at October 29, 2006</b>	41,485	\$415	\$378,143	\$202,652	\$675	\$(821)	\$33,218	\$ -	\$33,072	\$614,282

Comprehensive income:										
Net income	-	-	-	24,523	-	-	-	-	-	24,523
Unrealized holding gains					142	-	-	-	142	142
Less: reclassification adjustments	-	-	-	-	(600)	-	-	-	(600)	(600)
Change in fair value of cash flow hedge	-	-	-	-	-	(1,024)	-	-	(1,024)	(1,024)
Foreign currency translation adjustment	-	-	-	-	-	-	13,496	-	13,496	13,496
Other	-	-	-	-	-	-	-	(269)	(269)	(269)
<b>Total comprehensive income</b>	-	-	-	-	-	-	-	-	-	36,268
Sale of common stock through employee stock option and purchase plans	80	1	972	-	-	-	-	-	-	973
Restricted stock awards, net of amortization to compensation expense	70	-	730	-	-	-	-	-	-	730
Stock based compensation expense	-	-	2,031	-	-	-	-	-	-	2,031
<b>Balance at October 28, 2007</b>	<b>41,635</b>	<b>416</b>	<b>381,876</b>	<b>227,175</b>	<b>217</b>	<b>(1,845)</b>	<b>46,714</b>	<b>(269)</b>	<b>44,817</b>	<b>654,284</b>
Comprehensive income:										
Net loss	-	-	-	(210,765)	-	-	-	-	-	(210,765)
Unrealized holding losses					(340)	-	-	-	(340)	(340)
Less: reclassification adjustments	-	-	-	-	61	-	-	-	61	61
Amortization of cash flow hedges	-	-	-	-	-	193	-	-	193	193
Foreign currency translation adjustments	-	-	-	-	-	-	(62,234)	-	(62,234)	(62,234)
Other	-	-	-	-	-	-	-	2	2	2
<b>Total comprehensive loss</b>	-	-	-	-	-	-	-	-	-	(273,083)
Sale of common stock through employee stock option and purchase plan	25	-	162	-	-	-	-	-	-	162
Restricted stock awards, net of amortization to compensation expense	52	1	1,167	-	-	-	-	-	-	1,168
Stock-based compensation expense	-	-	1,297	-	-	-	-	-	-	1,297
Adoption of FIN 48 adjustment	-	-	-	(1,046)	-	-	-	-	-	(1,046)
<b>Balance at November 2, 2008</b>	<b>41,712</b>	<b>417</b>	<b>384,502</b>	<b>15,364</b>	<b>(62)</b>	<b>(1,652)</b>	<b>(15,520)</b>	<b>(267)</b>	<b>(17,501)</b>	<b>382,782</b>
Comprehensive income:										
Net loss	-	-	-	(41,910)	-	-	-	-	-	(41,910)
Unrealized holding gains	-	-	-	-	-	-	-	-	-	-
Less: reclassification adjustments	-	-	-	-	62	-	-	-	62	62
Amortization of cash flow hedges	-	-	-	-	-	576	-	-	576	576
Foreign currency translation adjustments	-	-	-	-	-	-	10,712	-	10,712	10,712
Other	-	-	-	-	-	-	-	(238)	(238)	(238)
<b>Total comprehensive loss</b>	-	-	-	-	-	-	-	-	-	(30,798)
Sale of common stock through employee stock option and purchase plan	28	-	117	-	-	-	-	-	-	117
Restricted stock awards, net of amortization to compensation expense	121	1	809	-	-	-	-	-	-	810
Stock-based compensation expense	-	-	1,326	-	-	-	-	-	-	1,326
Common stock issued in public offering, net	11,084	111	42,986	-	-	-	-	-	-	43,097
Common stock warrants issued	-	-	2,081	-	-	-	-	-	-	2,081
Common stock warrants exercised	66	1	339	-	-	-	-	-	-	340
<b>Balance at November 1, 2009</b>	<b>53,011</b>	<b>\$530</b>	<b>\$432,160</b>	<b>\$(26,546)</b>	<b>\$ -</b>	<b>\$(1,076)</b>	<b>\$(4,808)</b>	<b>\$(505)</b>	<b>\$(6,389)</b>	<b>\$399,755</b>

See accompanying notes to consolidated financial statements.

**PHOTRONICS, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Cash Flows**  
*(in thousands)*

	Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
Cash flows from operating activities:			
Net income (loss)	\$(41,910)	\$(210,765)	\$ 24,523
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization of property, plant and equipment	76,530	95,931	89,752
Amortization of deferred financing costs and intangible assets	13,944	8,001	8,266
Consolidation, restructuring and related charges - non cash	10,514	510	-
Impairment of long-lived assets	1,458	66,874	-
Impairment of goodwill	-	138,534	-
Stock-based compensation	2,136	2,622	2,890
Minority interest in income of consolidated subsidiaries	483	1,374	2,539
Gains on sales of facilities	(2,034)	-	(2,254)
Deferred income taxes	(2,943)	(1,944)	(961)
Changes in assets and liabilities:			
Accounts receivable	2,709	(7,310)	18,370
Inventories	3,111	(2,622)	2,008
Other current assets	3,087	(4,410)	7,528
Accounts payable, accrued liabilities and other	1,063	5,285	(17,968)
Net cash provided by operating activities	68,148	92,080	134,693
Cash flows from investing activities:			
Purchases of property, plant and equipment	(34,995)	(105,125)	(94,132)
Return of investment from joint venture	5,000	5,000	-
Proceeds from sale of facility	4,321	-	5,784
Proceeds from sales of short-term investments and other	1,158	3,815	66,304
Purchases of short-term investments and other	(162)	(327)	(4,151)
Investments in joint venture	-	(2,598)	(3,499)
Net cash used in investing activities	(24,678)	(99,235)	(29,694)
Cash flows from financing activities:			
Proceeds from long-term borrowings	28,112	139,640	4,303
Repayments of long-term borrowings	(161,841)	(176,009)	(87,084)
Proceeds from debt and equity offerings	103,500	-	-
Payments of expenses related to debt and equity offerings	(5,539)	-	-
Deferred financing costs and other	(4,734)	(3,790)	(527)
Payments to Micron Technology, Inc.	-	(7,500)	(7,500)
Proceeds from exercised stock options	-	-	988
Net cash used in financing activities	(40,502)	(47,659)	(89,820)
Effect of exchange rate changes on cash	1,808	(7,472)	1,445
Net increase (decrease) in cash and cash equivalents	4,776	(62,286)	16,624
Cash and cash equivalents at beginning of year	83,763	146,049	129,425
Cash and cash equivalents at end of year	\$ 88,539	\$ 83,763	\$146,049
Supplemental disclosure of cash flow information:			
Change in accrual for purchases of property, plant and equipment	\$(13,551)	\$(46,769)	\$ 51,582
Capital lease obligation for purchases of property, plant and equipment	\$(28,244)	\$ 61,662	\$ 19,912
Issuances of common stock warrants	\$ 5,320	\$ -	\$ -

See accompanying notes to consolidated financial statements.

**PHOTRONICS, INC. AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements**  
**Years Ended November 1, 2009, November 2, 2008 and October 28, 2007**  
*(in thousands, except share amounts)*

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Business**

Photronics, Inc. and its subsidiaries (the "Company" or "Photronics") is one of the world's leading manufacturers of photomasks, which are high precision photographic quartz plates containing microscopic images of electronic circuits. Photomasks are a key element in the manufacture of semiconductors and flat panel displays ("FPDs"), and are used as masters to transfer circuit patterns onto semiconductor wafers and flat panel substrates during the fabrication of integrated circuits ("IC") and a variety of FPDs and, to a lesser extent, other types of electrical and optical components. The Company currently operates principally from nine manufacturing facilities; two of which are located in Europe, two in Taiwan, one in Korea, one in Singapore, and three in the United States. The Company closed its manufacturing facilities in Manchester, United Kingdom and Shanghai, China during the year ended November 1, 2009.

**Consolidation**

The accompanying consolidated financial statements include the accounts of Photronics, Inc. and its majority-owned subsidiaries that the Company controls. All significant intercompany balances and transactions have been eliminated in consolidation.

**Estimates and Assumptions**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect amounts reported in them. Actual results may differ from such estimates.

**Subsequent Events**

The Company has performed an evaluation of subsequent events through January 8, 2010, which is the date these financial statements were issued in Form 10-K.

**Derivative Instruments and Hedging Activities**

The Company records derivatives on the balance sheet as assets or liabilities, measured at fair value. The Company does not engage in derivative instruments for speculative purposes. Gains or losses resulting from changes in the values of those derivatives are reported in the consolidated statement of operations, or as accumulated other comprehensive income ("OCI"), a separate component of shareholders' equity, depending on the use of the derivatives and whether they qualify for hedge accounting. In order to qualify for hedge accounting, among other criteria, the derivative must be a hedge for an interest rate, price, foreign currency exchange rate, or credit risk, expected to be highly effective at the inception of the hedge and be highly effective in achieving offsetting changes in the fair value or cash flows of the hedged item during the term of the hedge, and formally documented at the inception of the hedge. In general, the types of risks hedged are those relating to the variability of future cash flows caused by movements in foreign currency exchange and interest rates. The Company documents its risk management strategy and hedge effectiveness at the inception of, and during the term of each hedge.

**Fiscal Year**

The Company's fiscal year ends on the Sunday closest to October thirty-first, and, as a result, a 53-week year occurs every 5 to 6 years. Fiscal years 2009 and 2007 included 52 weeks; while fiscal year 2008 included 53 weeks. Fiscal year 2010 will include 52 weeks.

**Cash and Cash Equivalents**

Cash and cash equivalents include cash and highly liquid investments purchased with an original maturity of 3 months or less. The carrying values of cash equivalents approximate their fair values due to the short maturities of these instruments.

**Inventories**

Inventories, principally raw materials, are stated at the lower of cost, determined under the first-in, first-out ("FIFO") method, or market.

**Property, Plant and Equipment**

Property, plant and equipment, except as explained below under "Impairment of Long-Lived Assets," are stated at cost less accumulated depreciation and amortization. Repairs and maintenance, as well as renewals and replacements of a routine nature are charged to operations as incurred, while those which improve or extend the lives of existing assets are capitalized. Upon sale or other disposition, the cost of the asset and accumulated depreciation are removed from the accounts, and any resulting gain or loss is reflected in operations.

Depreciation and amortization are computed on a straight-line basis over the estimated useful lives of the related assets. Buildings and improvements are depreciated over 15 to 40 years, machinery and equipment over 3 to 10 years and, furniture, fixtures and office equipment over 3 to 5 years. Leasehold improvements are amortized over the life of the lease or the estimated useful life of the improvement, whichever is less. Judgment and assumptions are used in establishing estimated useful lives and depreciation periods. The Company also uses judgment and assumptions as it periodically reviews property, plant and equipment for any potential impairment in carrying values whenever events such as a significant industry downturn, plant closures, technological obsolescence, or other change in circumstances indicate that their carrying amount may not be recoverable.

### **Goodwill and Other Intangible Assets**

Intangible assets consist primarily of a technology license agreement, a supply agreement, acquisition-related intangibles, and prior to July 27, 2008, goodwill. These assets, except as explained below, are stated at fair value as of the date acquired less accumulated amortization. Amortization is calculated on a straight-line basis or another method that more fairly represents the utilization of the assets. The future economic benefit of the carrying values of intangible assets that are subject to amortization are tested for recoverability whenever events or changes in circumstances indicate the carrying value of an intangible asset may not be recoverable based on undiscounted cash flows or market factors, and an impairment loss would be recorded in the period so determined.

The Company tested goodwill for impairment annually and when an event occurred or circumstances changed that would more likely than not have reduced the fair value of a reporting unit below its carrying value. Goodwill was tested for impairment using a two-step process. In the first step, the fair value of the reporting unit was compared to its carrying value. For purposes of testing impairment, the Company is a single reporting unit. If the fair value of the reporting unit exceeded the carrying value of its net assets, goodwill was considered not impaired and no further testing was required. If the carrying value of the net assets exceeded the fair value of the reporting unit, a second step of the impairment test was performed in order to determine the implied fair value of a reporting unit's goodwill. Determining the implied fair value of goodwill required a valuation of the reporting unit's tangible and intangible assets and liabilities in a manner similar to the allocation of purchase price in a business combination. If the carrying value of the reporting unit's goodwill exceeded the implied fair value of its goodwill, goodwill was deemed impaired and was written down to the extent of the difference. In connection with the Company's latest test, the Company wrote off all of its \$138.5 million of goodwill in its third fiscal quarter of 2008.

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### **Impairment of Long-Lived Assets**

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability is based on the Company's judgment and estimates of undiscounted future cash flows resulting from the use of the assets and their eventual disposition. Measurement of an impairment loss for long-lived assets and certain identifiable intangible assets that management expects to hold and use is based on the fair value of the assets.

The carrying values of assets determined to be impaired are reduced to their estimated fair values. Fair values of any impaired assets would generally be determined using a market or income approach.

### **Investment in Joint Venture**

Investments in joint ventures over which the Company has the ability to exercise significant influence and that, in general, are at least 20 percent owned are stated at cost plus equity in undistributed net income (loss) of the joint venture. An impairment loss would be recognized whenever a decline in the value of such an investment below its carrying amount is determined to be other than temporary. In judging "other than temporary," the Company would consider the length of time and extent to which the fair value of the investment has been less than the carrying amount of the investment, the near-term and longer-term operating and financial prospects of the investee, and the Company's longer-term intent of retaining the investment in the investee.

### **Income Taxes**

The income tax (provision) benefit is computed on the basis of the various tax jurisdictions' income or loss before income taxes. Deferred income taxes reflect the tax effects of differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company uses judgment and assumptions to determine if valuation allowances for deferred income tax assets are required if realization is not likely by considering future market growth, forecasted operations, future taxable income, and the mix of earnings in the tax jurisdictions in which it operates.

The Company considers income taxes in each of the tax jurisdictions in which it operates in order to determine its effective income tax rate. Current income tax exposure is identified and temporary differences resulting from differing treatments of items for tax and financial reporting purposes are assessed. These differences result in deferred tax assets and liabilities, which are included in the Company's consolidated balance sheets. Additionally, the Company evaluates the recoverability of deferred income tax assets from future taxable income and establishes valuation allowances if recovery is deemed not more likely than not. Accordingly, the income tax provision in the consolidated statements of operations is impacted by changes in the valuation allowance. Significant management estimates and judgment are required in determining any valuation allowance recorded against net deferred tax assets. The Company accounts for uncertain tax positions by recording a liability for unrecognized tax benefits resulting from uncertain tax positions taken, or expected to be taken, in its tax returns.

### **Earnings Per Share**

Basic earnings per share ("EPS") is based on the weighted average number of common shares outstanding for the period, excluding any dilutive common share equivalents. Diluted EPS reflects the potential dilution that could occur if certain securities or other contracts to issue common stock were exercised or converted.



## Stock-Based Compensation

The Company adopted Statement of Financial Accounting Standards (SFAS) No. 123(R), "Share-Based Payment" (primarily codified under Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 718) on October 31, 2005, using the modified prospective method. Subsequently compensation expense is recognized in its consolidated statements of operations over the service period that the awards are expected to vest. The Company recognized expense for all stock-based compensation with graded vesting granted on or after October 31, 2005 on a straight-line basis over the vesting period of the entire award. For awards with graded vesting granted prior to October 31, 2005, the Company recognized compensation cost over the vesting period following accelerated recognition as if each underlying vesting date represented a separate award. Stock-based compensation expense includes the estimated effects of forfeitures, which will be adjusted over the requisite service period to the extent actual forfeitures differ, or are expected

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to differ, from such estimates. Changes in estimated forfeitures will be recognized in the period of change and will also impact the amount of expense to be recognized in future periods. The Company adopted the alternative transition method provided in Financial Accounting Standards Board ("FASB") Staff Position No. 123(R)-3 for calculating the tax effects of share-based compensation. Determining the appropriate fair-value model and calculating the fair value of stock-based awards at the grant date requires considerable judgment, including estimating stock price volatility and the expected term of options granted.

The Company uses the Black-Scholes option valuation model to value employee stock awards. The Company estimates stock price volatility based on daily averages of its historical volatility over a term approximately equal to the grant's estimated option life. The expected term of options and forfeiture rate assumptions are derived from historical data.

## Research and Development

Research and development costs are expensed as incurred, and consist primarily of global development efforts of high-end process technologies for advanced sub-wavelength reticle solutions for IC and FPD photomask technologies. Research and development expenses also include the amortization of the carrying value of a technology license agreement with Micron Technologies, Inc. (Micron). Under this technology license agreement, the Company has access to certain photomask technology developed by Micron.

## Foreign Currency Translation

The Company's international subsidiaries maintain their accounts in their respective local currencies. Assets and liabilities of such subsidiaries are translated to U.S. dollars at year-end exchange rates. Income and expenses are translated at average rates of exchange prevailing during the year. Foreign currency translation adjustments are accumulated and reported in OCI as a separate component of shareholders' equity. The effects of changes in exchange rates on foreign currency transactions, which are included in investment and other income, net, were a loss of \$3.1 million in 2009, a gain of \$3.8 million in 2008 and a gain of \$1.0 million in 2007.

## Minority Interest

Minority interest represents the minority shareholders' proportionate share in the equity of the Company's two majority-owned subsidiaries, PK Ltd. ("PKL") in Korea, and Photronics Semiconductor Mask Corporation ("PSMC") in Taiwan, of which minority shareholders owned approximately 0.3% and 42%, respectively, as of November 1, 2009 and November 2, 2008.

## Revenue Recognition

The Company recognizes revenue when there is persuasive evidence that an arrangement exists, delivery has occurred, the sales price is fixed or determinable, and collectability is reasonably assured. The Company uses judgment when estimating the effect on revenue of discounts and product warranty obligations, both of which are accrued when the related revenue is recognized.

Warranties and Other Post Shipment Obligations - For a 30-day period, the Company warrants that items sold will conform to customer specifications. However, the Company's liability is limited to repair or replacement of the photomasks at its sole option. The Company inspects photomasks for conformity to customer specifications prior to shipment. Accordingly, customer returns of items under warranty have historically been insignificant. However, the Company records a liability for the insignificant amount of estimated warranty returns based on historical experience. The Company's specific return policies include accepting returns for products with defects, or products that have not been produced to precise customer specifications. At the time of revenue recognition, a liability is established for these items.

Sales Taxes - The Company presents its revenues in the consolidated statements of income, net of sales taxes, if any (excluded from revenues).

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## NOTE 2 - PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment consist of the following:

November 1, 2009	November 2, 2008
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Land	\$ 7,901	\$ 8,393
Buildings and improvements	91,167	120,808
Machinery and equipment	1,001,085	1,016,741
Leasehold improvements	7,338	5,813
Furniture, fixtures and office equipment	15,351	17,528
Construction in progress	17,183	6,551
	<u>1,140,025</u>	<u>1,175,834</u>
Less accumulated depreciation and amortization	792,136	739,306
	<u>\$ 347,889</u>	<u>\$ 436,528</u>

Property, plant and equipment at November 1, 2009 reflects an approximately \$28 million reduction in the carrying value of the Company's assets under capital leases that resulted from the cancellation of the Company's lease agreement with Micron for the U.S. nanoFab facility. Concurrently with this lease cancellation, the Company and Micron entered into a new lease for the facility (see Note 4 for further discussion). This lease will continue to be accounted for as a capital lease through December 31, 2012, at which time it will be accounted for as an operating lease. See Note 7 for further discussion.

Property under capital leases are included in above property, plant and equipment as follows:

	<u>November 1, 2009</u>	<u>November 2, 2008</u>
Buildings and improvements	\$33,621	\$61,662
Machinery and equipment	19,912	19,912
	<u>53,533</u>	<u>81,574</u>
Less accumulated amortization	10,876	3,482
	<u>\$42,657</u>	<u>\$78,092</u>

The Company capitalized interest expense of \$0.5 million during the fiscal year ended November 2, 2008.

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### NOTE 3 - GOODWILL AND OTHER INTANGIBLE ASSETS

As discussed in Note 13 to the consolidated financial statements, the Company wrote off all of its \$138.5 million of goodwill during the fiscal year ended November 2, 2008. Intangible assets that do not have indefinite lives are amortized based on their estimated useful lives, which range from 3 to 15 years. Intangible asset amortization is forecasted to range from \$4.8 million to \$6.0 million per year for the next 5 years.

Other intangible assets include assets related to the purchase of additional shares of PKL and the investment to form the MP Mask joint venture. Other intangible assets consist of:

<b>As of November 1, 2009</b>	<u>Gross Amount</u>	<u>Accumulated Amortization</u>	<u>Net Amount</u>
Technology license agreement	\$59,616	\$13,579	\$46,037
Customer lists	7,210	2,709	4,501
Supply agreement	6,959	4,907	2,052
Patents	156	59	97
Software and other	5,190	2,823	2,367
	<u>\$79,131</u>	<u>\$24,077</u>	<u>\$55,054</u>

#### **As of November 2, 2008**

Technology license agreement	\$59,616	\$ 9,605	\$50,011
Customer lists	7,210	1,490	5,720
Supply agreement	6,959	4,016	2,943
Patents	156	32	124
Software and other	5,569	1,981	3,588

**NOTE 4 - JOINT VENTURE, TECHNOLOGY LICENSE AND OTHER AGREEMENTS WITH MICRON TECHNOLOGY, INC.**

On May 5, 2006, Photronics and Micron entered into the MP Mask joint venture, which develops and produces photomasks for leading-edge and advanced next generation semiconductors. As part of the formation of the joint venture, Micron contributed its existing photomask technology center located at its Boise, Idaho, headquarters to MP Mask and Photronics invested \$135 million in exchange for a 49.99% interest in MP Mask (to which \$64.2 million of the original investment was allocated), a license for photomask technology of Micron, and certain supply agreements. Of the total \$135 million investment, \$120 million was paid to Micron on May 6, 2006 and, as of that date, the remaining \$15 million was a non-cash financing activity, which was subsequently paid in two installments of \$7.5 million each in May 2007 and June 2008.

This joint venture is a variable interest entity primarily because all costs of the joint venture will be passed on to the Company and Micron through purchase agreements they have entered into with the joint venture. The Company determined that, in regards to this variable interest entity ("VIE"), it and Micron are de facto agents as that term was defined in FIN 46(R) (primarily codified under ASC 810) and that Micron is the primary beneficiary of the VIE as it is the de facto agent within the aggregated group of de facto agents (i.e. the Company and Micron) that is the most closely associated with the VIE. The primary reasons the Company concluded that Micron is the most closely associated of the de facto agents to the VIE are that Micron is both the ultimate purchaser of substantially all of the products produced by the VIE and that it is the holder of decision making authority in the ordinary course of business.

MP Mask is governed by a Board of Managers, appointed by Micron and the Company. Since MP Mask's inception, Micron, as a result of its majority ownership, has appointed the majority of the managers. The number of managers appointed by each party is subject to change as ownership interests change. Under the Operating Agreement relating to the MP Mask joint venture, through May 5, 2010, the Company may be required to make additional capital contributions to

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the joint venture up to the maximum amount defined in the Operating Agreement. In the event that the Board of Managers determines that additional funding is required, the joint venture will first pursue its own financing and, if it is unable to obtain its own financing, it may request additional capital contributions from the Company. Should the Company choose not to make a requested contribution to the joint venture, its ownership interest may be reduced. The Company received \$5 million distributions from MP Mask in both the years ended November 1, 2009 and November 2, 2008. The Company invested \$2.8 million in MP Mask during the year ended November 2, 2008, which was used for working capital and capital expenditure purposes.

The Company's investment in the VIE, which represents its maximum exposure to loss, was \$60.9 million and \$65.7 million at November 1, 2009 and November 2, 2008, respectively. These amounts are reported in the Company's condensed consolidated balance sheets as "Investment in joint venture".

The Company has utilized MP Mask for both high-end IC photomask production and research and development purposes. MP Mask charges its variable interest holders based on their actual usage of its facility. MP Mask separately charges for any research and development activities it engages in at the requests of its owners.

As of November 1, 2009, the Company owed MP Mask \$4.3 million and had a receivable from Micron of \$3.8 million, both primarily related to the supply agreements. The Company, in 2009, recorded \$1.8 million of commission revenue earned under the supply agreements it has with Micron and MP Mask. Amortization of \$0.9 million of the supply agreement intangible asset resulted in net earnings related to the supply agreements of \$0.9 million in 2009. The recorded commission revenue of \$1.8 million represents the excess of \$37.9 million in orders received from Micron over the Company's cost of \$36.1 million to fulfill the orders through MP Mask. The Company, for certain sales during 2009, also recorded cost of sales in the amount of \$4.2 million for photomasks produced by MP Mask for the Company's customers and, incurred outsourcing expenses of \$2.0 million from MP Mask for research and development activities and other goods and services purchased by the Company.

As of November 2, 2008, the Company owed MP Mask \$3.5 million and had a receivable from Micron of \$3.8 million, both primarily related to the supply agreements. The Company, in 2008, recorded \$2.7 million of commission revenue earned under the supply agreements it has with Micron and MP Mask. Amortization of \$1.5 million of the supply agreement intangible asset resulted in net earnings related to the supply agreements of \$1.2 million in 2008. The recorded commission revenue of \$2.7 million represents the excess of \$44.8 million in orders received from Micron over the Company's cost of \$42.1 million to fulfill the orders through MP Mask. For certain sales during 2008, the Company also recorded cost of sales in the amount of \$3.2 million for photomasks produced by MP Mask for the Company's customers and incurred outsourcing expenses of \$1.7 million from MP Mask for research and development activities purchased by the Company. The Company also purchased excess equipment from MP Mask for use in its U.S. nanoFab in the amount of \$4.1 million in 2008.

In the first quarter of 2008 a capital lease agreement commenced for the U.S. nanoFab facility. Quarterly lease payments, which bore interest at 8% were \$3.8 million through January 2013. This lease was cancelled in the third fiscal quarter of 2009, at which time the Company and Micron (the lessor) entered into a new lease agreement for the facility. Under the provisions of the new lease agreement, quarterly lease payments were reduced from \$3.8 million to \$2.0 million, the term of the lease was extended from December 31, 2012 to December 31, 2014, and ownership of the property will not transfer to the Company at the end of the lease term. As a result of the new lease agreement, the Company reduced its lease obligation and the carrying value of its assets under capital leases by approximately \$28 million. The lease will continue to be accounted for as a capital lease until the end of its original lease term. For the additional two years of the new lease term, the

lease will be accounted for as an operating lease. The U. S. nanoFab began production in the second quarter of 2008 and, through the end of fiscal 2009, the Company's total capital investment in the facility is approximately \$157 million.

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## NOTE 5 - ACCRUED LIABILITIES

Accrued liabilities consist of the following:

	November 1, 2009	November 2, 2008
Income taxes	\$ 5,808	\$ 8,586
Salaries, wages and related benefits	4,728	5,967
Restructuring	414	1,134
Interest	1,113	984
VAT and other taxes	1,610	1,240
Property taxes	1,225	1,507
Other	6,069	6,239
	\$20,967	\$25,657

## NOTE 6 - DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

The Company utilizes derivative instruments to reduce its exposure to the effects of the variability of interest rates and foreign currencies on its financial performance when it believes such action is warranted. Historically, the Company has been a party to derivative instruments to hedge either the variability of cash flows of a prospective transaction or the fair value of a recorded asset or liability. In certain instances, the Company has designated these transactions as hedging instruments. However, whether or not a derivative was designated as being a hedging instrument, the Company's purpose for engaging in the derivative has always been for risk management (and not speculative) purposes. The Company has historically not been a party to a significant number of derivative instruments and does not expect its derivative activity to significantly increase in the foreseeable future.

In addition to the utilization of derivative instruments discussed above, the Company attempts to minimize its risk of foreign currency exchange rate variability by, whenever possible, procuring production materials within the same country that it will utilize the materials in manufacturing and, by selling to customers from manufacturing sites within the country in which the customers are located.

On May 15, 2009, in connection with an amendment to its credit facility, the Company issued 2.1 million warrants, each exercisable for one share of the Company's common stock at an exercise price of \$0.01 per share. Forty percent of the warrants were exercisable upon issuance, and the remaining balance was to become exercisable in twenty percent increments at various points in time after October 31, 2009. As a result of certain net cash settleable put provisions within the warrant agreement, the warrants were recorded as a liability in the Company's consolidated balance sheet. As of the issuance date and for future periods that such warrants remain outstanding, the Company has, and will continue to, adjust the liability based upon the current fair value of the warrants, with any changes in their fair value being recognized in earnings. Due to the warrants' exercise price of \$0.01 per share, their fair value will approximate the market price of the Company's common stock. Approximately 1.2 million of these warrants were cancelled as a result of the Company's early repayment of certain amounts under its credit facility during the year ended November 1, 2009 and the associated liability was reduced accordingly (see Note 7 for further discussion).

The Company was a party to two foreign currency forward contracts which expired during the year ended November 1, 2009, both of which were not accounted for as hedges, as they were economic hedges of intercompany loans denominated in U.S. dollars that were remeasured at fair value and recognized immediately in earnings. A portion of an existing loss on a cash flow hedge in the amount of \$0.1 million is expected to be reclassified into earnings during fiscal year 2010.

The table below presents the effect of derivative instruments on the Company's consolidated balance sheet at November 1, 2009.

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Derivatives Not Designated as Hedging Instruments Under ASC 815	Balance Sheet Location	Fair Value
Warrants on common stock	Other liabilities	\$3,205

The table below presents the effect of derivative instruments on the Company's statement of operations for the year ended November 1, 2009.

<b>Derivatives Not Designated as Hedging Instruments Under ASC 815</b>	<b>Location of Gain (Loss) Recognized in Income on Derivatives</b>	<b>Amount of Gain (Loss) Recognized in Income on Derivatives</b>
Warrants on common stock	Investment and other income (expense), net	\$ (305)
Foreign exchange contracts	Investment and other income (expense), net	\$ 93

#### **NOTE 7 - LONG-TERM BORROWINGS**

Long-term borrowings consist of the following:

	<b>November 1, 2009</b>	<b>November 2, 2008</b>
5.50% convertible senior notes due on October 1, 2014	\$ 57,500	\$ -
Borrowings under revolving credit facility, which bears interest at a variable rate, as defined (8.00% at November 1, 2009; 6.36% at November 2, 2008)	2,568	122,500
Term loan which bears interest at a variable rate as defined (8.00% at November 1, 2009)	27,204	-
8.0% capital lease obligation payable through January 2013	22,552	53,895
5.6% capital lease obligation payable through October 2012	12,614	16,669
Foreign loans (repaid in 2009):		
Revolving loan	-	19,045
Term loan	-	8,204
Short-term loan	-	3,296
	<u>122,438</u>	<u>223,609</u>
Less current portion	10,301	20,630
	<u>\$112,137</u>	<u>\$202,979</u>

As of November 1, 2009, long-term borrowings, excluding capital lease obligations, mature as follows: \$9,068 in fiscal year 2010, \$20,704 in fiscal year 2011, and \$57,500 in fiscal year 2014. It is the Company's intention to pay the \$9,068 maturing in 2010 by utilizing funds available under its credit facility and, as a result, this amount has been classified as a long-term borrowing.

As of November 1, 2009, minimum lease payments under the Company's capital lease obligations were as follows:

#### **Fiscal Year:**

2010	\$12,149
2011	12,531
2012	12,531
2013	2,369
	<u>39,580</u>

Less interest	4,414
Net minimum lease payments under capital leases	35,166
Less current portion of net minimum lease payments	10,301
Long-term portion of minimum lease payments	\$24,865

On September 11, 2009 the Company sold, through a public offering, \$57.5 million aggregate principal amount of 5.5% convertible senior notes which mature on October 1, 2014. Note holders may convert each \$1,000 principal amount of notes to 196.7052 shares of stock (equivalent to an initial conversion price of approximately \$5.08 per share of common stock) on September 30, 2014. The conversion rate may be increased in the event of a make-whole fundamental change (as defined in the prospectus supplement filed by the Company on September 11, 2009) and the Company may not redeem the notes prior to their maturity date. The net proceeds of the convertible senior notes offering were approximately \$54.9 million, which were used to reduce outstanding amounts under the Company's credit facility.

On June 6, 2007, the Company and a group of financial institutions entered into a credit agreement, which allows for borrowings under various currencies. In 2008 and 2009 the credit agreement was amended and on May 15, 2009 the maturity date of the agreement was changed from July 30, 2010 to January 31, 2011 and the aggregate commitment was amended and reduced to \$130 million. Per the credit agreement, the bank debt repayments primarily from the net proceeds of the convertible debt and common stock offerings, further reduced the aggregate commitment and as of November 1, 2009 the aggregate commitment was \$50 million. On January 31, 2010 the aggregate commitment will be further reduced to \$34 million. Amounts borrowed under the credit agreement are secured by substantially all of the Company's assets located in the United States as well as stock held by the Company of certain of its subsidiaries.

The cash interest rate on the outstanding debt balance is the greater of LIBOR or two percent, plus a spread, as defined. Fourth quarter 2009 payment-in-kind (PIK) interest, which accrues in the outstanding debt balance, is one percent and increases fifty basis points per quarter to a maximum of two and one-half percent. The PIK interest can be paid during the term of the credit facility or at maturity. In addition, the Company entered into a warrant agreement with its lenders for 2.1 million shares of its common stock. Forty percent of the warrants were exercisable upon issuance, with twenty percent increments exercisable after October 31, 2009, April 30, 2010, and October 31, 2010 at an exercise price of \$0.01 per share. In fiscal 2009, approximately 0.1 million warrants were exercised and 1.2 million were cancelled in connection with the Company's early repayment of a portion of the outstanding balance under its credit facility. At November 1, 2009, 0.8 million of these warrants remained outstanding and exercisable. The warrant agreement also includes a net cash settleable put provision exercisable starting in May 2012 and a call provision exercisable starting in May 2013, both of which are exercisable only if the Company's common stock is not traded on a national exchange or if its credit facility, which matures on January 31, 2011, is not paid in full by another financing facility (new credit facility, debt and/or equity securities, or capital contributions) or with other funds. As a result of the aforementioned net cash settleable put provisions, the warrants were recorded as a liability (included in other liabilities) and are subsequently reported at their fair value.

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The credit facility's financial covenants include, among other items as defined: a Senior Leverage Ratio, Total Leverage Ratio, Minimum Fixed Charge Ratio, Maximum Capital Expenditures limitation, and a six-month minimum EBITDA covenant. Cash received as a result of certain defined events is required to be used to pay down the outstanding loan balance and reduce the available credit facility by the same amount. In addition, the credit facility prohibits the payment of dividends and requires Minimum Unrestricted Cash Balances, as defined, at the end of each quarter.

Net proceeds of the Company's 5.5% convertible debt and common stock offerings of approximately \$98 million, cash from operations of \$18 million and proceeds from the sale of the Manchester, U.K. facility of \$4.3 million were used to reduce the credit facilities outstanding balance from \$122.5 million at November 2, 2008 to its November 1, 2009 balance of \$2.6 million, which included the above mentioned PIK interest. The Company's available credit under its credit facility has been reduced to \$50.0 million, \$47.4 million of which is unused at November 1, 2009, and all of which is due on January 31, 2011.

In addition to the credit facility discussed above, the Company also entered into a term loan agreement in the U.S. dated June 8, 2009 with an aggregate commitment of \$27.2 million. The term loan has the same interest rate terms, maturity date and covenants as the credit facility discussed above. In June 2009, the Company borrowed \$27.2 million under the term loan and used the proceeds of this loan to repay the remaining outstanding balances of its foreign loans in China. Under the terms of the term loan agreement, \$9.1 million is due on January 31, 2010 and the remaining balance is due by January 31, 2011. It is the Company's intention to pay the \$9.1 million due on January 31, 2010 by utilizing funds available under its credit facility and, therefore, the Company has classified the \$9.1 million as a long-term borrowing.

As of November 2, 2008, foreign loans were in China, and consisted of a term and revolving debt credit facility and a short-term loan, which were fully outstanding, and amounted to RMB 186 million (\$27.2 million) and RMB 22.5 million (\$3.3 million), respectively. Interest rates were variable and based on the People's Bank of China base rate, plus a spread, as defined. The short-term credit line was repaid in March 2009 and the term and revolving debt credit facility were repaid with the proceeds of the term loan entered into in June 2009.

In the first quarter of 2008 a capital lease agreement commenced for the U.S. nanoFab facility. Quarterly lease payments, which bore interest at 8% were \$3.8 million through January 2013. This lease was cancelled in the third fiscal quarter of 2009, at which time the Company and Micron (the lessor) entered into a new lease agreement for the facility. Under the provisions of the new lease agreement, quarterly lease payments were reduced from \$3.8 million to \$2.0 million, the term of the lease was extended from December 31, 2012 to December 31, 2014, and ownership of the property will not transfer to the Company at the end of the lease term. As a result of the new lease agreement, the Company reduced its lease obligation and the carrying value of its assets under capital leases by approximately \$28 million. The lease will continue to be accounted for as a capital lease until the end of its original lease term. For the additional two years of the new lease term, the

lease will be accounted for as an operating lease. As of November 1, 2009, total capital lease amounts payable were \$25.8 million, of which \$22.5 million represented principal and \$3.3 million represented interest.

In October 2007, the Company entered into a capital lease agreement in the amount of \$19.9 million associated with certain equipment. Under the capital lease agreement, the Company is required to maintain the equipment in good working condition, and is required to comply with certain non-financial covenants. Payments under the lease are \$0.4 million per month over a 5-year term at a 5.6% interest rate.

Interest payments were \$20.8 million, \$12.5 million and \$8.1 million in fiscal 2009, 2008 and 2007, respectively; including deferred financing cost payments of \$6.5 million, \$1.6 million and \$0.5 million in fiscal 2009, 2008 and 2007, respectively.

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## Note 8 - Common Stock Warrants

On September 10, 2009 the Company entered into two warrant agreements with Intel Capital Corporation to purchase a total of 750,000 shares of the Company's common stock. Under one warrant agreement 500,000 shares of the Company's common stock can be purchased at an exercise price of \$4.15 per share and under the second warrant agreement 250,000 shares of the Company's common stock can be purchased at an exercise price of \$5.08 per share. The warrant agreements expire on September 10, 2014. Also on September 10, 2009 the Company and Intel Corporation entered into an agreement to share technical and operations information regarding the development of the Company's products, the capabilities of the Company's photomask manufacturing lines and the alignment of photomask toolsets. Intel Capital Corporation also invested in the Company's convertible debt offering. The warrants were recorded at their fair value on their date of grant, which was determined using the Black-Scholes option pricing model.

In conjunction with the May 15, 2009 amendment to its credit facility, the Company also entered into a warrant agreement with its lenders. See Note 7 for further discussion of these warrants.

## NOTE 9 - OPERATING LEASES

The Company leases various real estate and equipment under non-cancelable operating leases. Rental expense under such leases amounted to \$3.6 million in fiscal 2009, \$3.1 million in fiscal 2008 and \$3.4 million in fiscal 2007. As discussed in Note 7, the Company entered into a new lease agreement for the U.S. nanoFab, under which the lease will be accounted for as a capital lease through December 31, 2012 (the end date of its original lease term) and, thereafter, as an operating lease through its expiration on December 31, 2014.

Future minimum lease payments under non-cancelable operating leases (including lease payments in 2013 and 2014 for the U.S. nanoFab facility discussed above) with initial or remaining terms in excess of one year at November 1, 2009 follow:

2010	\$ 2,157
2011	1,715
2012	1,473
2013	7,112
2014	8,427
Thereafter	3,031
	<hr/>
	\$23,915
	<hr/>

See Note 7 for disclosures related to the Company's capital lease obligations.

## NOTE 10 - STOCK-BASED COMPENSATION

In March 2007, shareholders approved a new stock-based compensation plan ("Plan"), under which options, restricted stock, restricted stock units, stock appreciation rights, performance stock, performance units, and other awards based on, or related to, shares of the Company's common stock may be granted from shares authorized but unissued, shares previously issued and reacquired by the Company, or both. A maximum of three million shares of common stock may be issued under the Plan. Awards may be granted to officers, employees, directors, consultants, advisors, and independent contractors of the Company or its subsidiaries. The Plan, aspects of which are more fully described below, prohibits further awards from being issued under prior plans. The Company incurred compensation cost under the Plan of \$2.0 million, \$2.6 million and \$2.9 million for fiscal 2009, 2008 and 2007, respectively. No compensation cost was capitalized as part of inventory, no income tax benefits were recorded, and no equity awards were settled in cash during the periods presented.

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## Stock Options

Option awards generally vest in one to four years, and have a ten year contractual term. All incentive and non-qualified stock option grants must have an exercise price no less than the market value of the underlying common stock on the date of grant. The option and share awards provide for accelerated vesting if there is a change in control as defined in the Plan.

The grant date fair value of options is generally based on the closing price on the date of grant using the Black-Scholes option pricing model. Expected volatility is based on the historical volatility of the Company's stock. The Company uses historical option exercise behavior and employee termination data to estimate expected term, which represents the period of time that the options granted are expected to remain outstanding. The risk-free rate of return for the estimated life of the option is based on the U.S. treasury yield curve in effect at the time of grant. The weighted average assumptions used for fiscal 2009, 2008 and 2007 are presented in the following table:

	<b>Year Ended</b>		
	<b>November 1, 2009</b>	<b>November 2, 2008</b>	<b>October 28, 2007</b>
Volatility	69.8%	43.1%	52.4%
Risk-free rate of return	1.9 - 2.5%	2.99%	4.5%
Dividend yield	0.0%	0.0%	0.0%
Expected term	4.7 years	4.7 years	4.6 years

A summary of option activity under the Plan as of November 1, 2009 and changes during the year then ended is presented as follows:

<b>Options</b>	<b>Shares</b>	<b>Weighted Average Exercise Price</b>	<b>Weighted Average Remaining Contractual Life</b>	<b>Aggregate Intrinsic Value</b>
Outstanding at November 2, 2008	2,172,207	\$18.21		
Granted	1,350,250	0.77		
Exercised	-	-		
Cancelled and forfeited	(188,599)	15.75		
Outstanding at November 1, 2009	<u>3,333,858</u>	<u>\$11.21</u>	<u>6.4 years</u>	<u>\$4,618</u>
Exercisable at November 1, 2009	<u>1,819,039</u>	<u>\$18.79</u>	<u>4.4 years</u>	<u>\$ 18</u>
Expected to vest as of November 1, 2009	<u>1,447,196</u>	<u>\$ 1.92</u>	<u>8.9 years</u>	<u>\$4,458</u>

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The weighted average grant date fair value of options granted during the fiscal years 2009, 2008 and 2007 was \$0.44, \$1.86 and \$7.15 respectively. The total intrinsic value of options exercised during fiscal years 2009, 2008, and 2007 was \$0.0 million, \$0.0 million, and \$0.1 million, respectively. A summary of the status of the Company's non-vested options as of November 1, 2009 is presented below:

<b>Non-vested Options</b>	<b>Shares</b>	<b>Weighted Average Fair Value at Grant Date</b>
Non-vested at November 2, 2008	418,763	\$6.92
Granted	1,350,250	0.44
Vested	(141,769)	7.47
Cancelled and forfeited	(112,425)	7.07
Non-vested at November 1, 2009	<u>1,514,819</u>	<u>\$1.09</u>

As of November 1, 2009 the total compensation cost for non-vested option awards not yet recognized was approximately \$1.2 million. That cost is expected to be recognized over a weighted average amortization period of 1.8 years.

## Restricted Stock



The Company periodically grants restricted stock awards. The restrictions on these awards lapse over a service period that has ranged from less than one to eight years. The weighted average grant date fair value of restricted stock grants during the fiscal years 2009, 2008 and 2007 was \$0.76, \$11.72 and \$13.75, respectively. The total value of awards for which restrictions lapsed during fiscal years 2009, 2008 and 2007 was \$0.3 million, \$0.6 million and \$0.1 million, respectively. As of November 1, 2009, the total compensation cost for non-vested option awards not yet recognized was approximately \$1.9 million. That cost is expected to be recognized over a weighted average amortization period of 3.7 years. A summary of the status of the Company's non-vested restricted shares as of November 1, 2009 is presented as follows:

Restricted Stock	Shares	Weighted Average Fair Value at Grant Date	Weighted Average Remaining Contractual Life	Aggregate Intrinsic Value
Outstanding at November 2, 2008	292,675	\$14.60		
Granted	75,000	0.76		
Vested	(121,203)	7.70		
Cancelled and forfeited	(76,187)	15.49		
Outstanding at November 1, 2009	170,285	\$13.02	3.0 years	\$712
Expected to vest as of November 1, 2009	148,897	\$12.69	2.9 years	\$622

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#### *Employee Stock Purchase Plan*

The Company's Employee Stock Purchase Plan ("ESPP") permits employees to purchase shares at 85% of the lower of the fair market value at the commencement of the offering or the last day of the payroll payment period. A total of 900,000 shares are currently available for purchase under the ESPP. The vesting period for the ESPP is approximately one year. Under the ESPP 777,490 shares had been issued through November 1, 2009 and an additional 143,965 shares are subject to outstanding subscriptions.

#### **NOTE 11 - EMPLOYEE RETIREMENT PLANS**

The Company maintains a 401(k) Savings and Profit Sharing Plan ("401(k) Plan") which covers all full-time domestic employees who have completed 3 months of service and are 18 years of age or older. Under the terms of the 401(k) Plan, employees may contribute up to 50% of their salary, subject to certain maximum amounts, which will be matched by the Company at 50% of the employee's contributions, which are not in excess of 4% of the employee's compensation. Employee and employer contributions vest fully upon contribution. Employer contributions amounted to \$0.2 million in fiscal 2009, \$0.5 million in fiscal 2008 and \$0.4 million in fiscal 2007.

The Company's international subsidiaries maintain retirement plans for their employees, which vary by country. The obligations and cost of these plans are not significant to the Company's consolidated financial statements.

#### **NOTE 12 - CONSOLIDATION, RESTRUCTURING AND RELATED CHARGES**

##### **2009 Restructurings**

##### *Shanghai, China Facility*

During the three months ended August 2, 2009, the Company ceased the manufacture of photomasks at its Shanghai, China facility. In connection with this restructuring, the Company recorded a total restructure charge of \$10.2 million, including \$9.9 million for asset write-downs, principally related to the Company's manufacturing facility. The fair value of the assets written down was determined by management using a market approach. Approximately 75 employees were affected by this restructuring.

The Company expects the total after tax cost of this restructure to range between \$11 million to \$13 million through its expected completion in 2010. The following table sets forth the Company's restructuring reserve as of November 1, 2009 relating to its Shanghai, China facility, and reflects the activity affecting the reserve for the year then ended.

	Year Ended November 1, 2009			
	November 3, 2008	Charges	Utilized	November 1, 2009
Asset write-downs	\$ -	\$ 9,908	\$ (9,908)	\$ -
Other	-	324	(190)	134
	\$ -	\$10,232	\$(10,098)	\$134

The Company is currently in negotiations to sell its Shanghai, China facility.

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Manchester, U.K. Facility

During the three months ended February 1, 2009, the Company ceased the manufacture of photomasks at its Manchester, U.K. facility, and in connection therewith incurred restructuring charges of \$3.3 million in fiscal 2009, primarily for employee termination costs and asset write-downs. Approximately 85 employees were affected by this plan, which was completed in the fourth quarter of fiscal 2009. The following table sets forth the Company's 2009 restructuring reserve related to its Manchester, U.K. facility as of November 1, 2009, and reflects the activity affecting the reserve for the year then ended.

<b>Year Ended November 1, 2009</b>				
	<b>November 3, 2008</b>	<b>Charges</b>	<b>Utilized</b>	<b>November 1, 2009</b>
Employee terminations	\$ -	\$2,375	\$(2,375)	\$ -
Asset write-downs and other	-	950	(950)	-
	<u>\$ -</u>	<u>\$3,325</u>	<u>\$(3,325)</u>	<u>\$ -</u>

**Prior Restructurings**

In May 2006, the Company closed its Austin, Texas manufacturing and research and development facility, and in March 2003 closed its Phoenix, Arizona manufacturing facility. The following tables set forth the Company's restructuring reserves as of November 1, 2009, November 2, 2008, and October 28, 2007, and reflect the activity affecting the reserves for the years then ended.

<b>Year Ended November 1, 2009</b>				
	<b>November 3, 2008 Balance</b>	<b>Charges</b>	<b>Utilized</b>	<b>November 1, 2009 Balance</b>
Manufacturing capacity reduction and other	\$1,134	\$ -	\$(854)	\$280
Total	<u>\$1,134</u>	<u>\$ -</u>	<u>\$(854)</u>	<u>\$280</u>

<b>Year Ended November 2, 2008</b>				
	<b>October 29, 2007 Balance</b>	<b>Charges</b>	<b>Utilized</b>	<b>November 2, 2008 Balance</b>
Manufacturing capacity reduction and other	\$1,687	\$ -	\$(553)	\$1,134
Total	<u>\$1,687</u>	<u>\$ -</u>	<u>\$(553)</u>	<u>\$1,134</u>

<b>Year Ended October 28, 2007</b>				
	<b>October 30, 2006 Balance</b>	<b>Charges</b>	<b>Utilized</b>	<b>October 28, 2007 Balance</b>
Manufacturing capacity reduction and other	\$2,528	\$ -	\$(841)	\$1,687
Workforce reductions	126	-	(126)	-

Total	\$2,654	\$ -	\$(967)	\$1,687
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### NOTE 13 - IMPAIRMENTS OF GOODWILL AND LONG-LIVED ASSETS

The Company, as of July 27, 2008, the Company performed an interim impairment test of its goodwill and certain of its long-lived assets (principally machinery and equipment, and buildings and improvements) due to events and changes in circumstances through the third quarter of fiscal 2008 that indicated an impairment might have occurred.

Factors deemed by management to have collectively constituted an impairment triggering event included net losses in each of three quarters of fiscal 2008, and a significant decrease in the Company's market capitalization through the third quarter of fiscal 2008 which was significantly below its consolidated net assets. As a result of this impairment testing, the Company recorded the following impairment charges during the three and nine months ended July 27, 2008.

Impairment of goodwill	\$138,534
Impairment of long-lived assets	66,874
Total impairments	<u>\$205,408</u>

#### Goodwill

The Company tested goodwill for impairment annually and if an event occurred or circumstances changed that would more likely than not have reduced the fair value of a reporting unit below its carrying value. Goodwill was tested for impairment using a two-step process. In the first step, the fair value of the reporting unit was compared to its carrying value. The Company, for purposes of testing its goodwill for impairment, was a single reporting unit. If the fair value of the reporting unit exceeded the carrying value of its net assets, goodwill was considered not impaired and no further testing was required. If the carrying value of the net assets exceeded the fair value of the reporting unit, a second step of the impairment test was performed in order to determine the implied fair value of a reporting unit's goodwill. Determining the implied fair value of goodwill required a valuation of the reporting unit's tangible and intangible assets and liabilities in a manner similar to the allocation of purchase price in a business combination. If the carrying value of the reporting unit's goodwill exceeded the implied fair value of its goodwill, goodwill was deemed impaired and was written down to the extent of the difference.

Through the third quarter of fiscal 2008, the Company experienced a sustained, significant decline in its stock price. As a result of the decline in stock price, the Company's market capitalization fell significantly below the recorded value of its consolidated net assets during the third quarter of fiscal 2008. Accordingly, in the third quarter of fiscal 2008, the Company performed an assessment of goodwill for impairment. Based on the results of the Company's initial assessment of impairment of its goodwill, it was determined that the consolidated carrying value of the Company exceeded its estimated fair value. Therefore, the Company performed a second step of the impairment test to determine the implied fair value of its goodwill. The result of the analysis indicated that there would be no remaining implied value attributable to the Company's goodwill and, accordingly, the Company wrote off all of its \$138.5 million of goodwill as of July 27, 2008.

In performing the goodwill assessment, the Company used current market capitalization, discounted cash flows and other factors as the best evidence of fair value. There are inherent uncertainties in an analysis of goodwill for impairment and management judgment is required.

#### Long-Lived Assets

The Company reviews its long-lived assets whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. If the carrying amount of an asset or group of assets exceeds its net realizable value, the asset will be written down to its fair value. In connection with the triggering events discussed above, during the third quarter of fiscal year 2008 the Company determined that long-lived assets were impaired for certain groups of its assets. The determination was based on reviewing estimated undiscounted cash flows for these groups of assets, which were less than their carrying values. The Company considers its asset groups to be the long-lived assets at each of its locations, primarily consisting of machinery and equipment, and buildings and improvements. As a result, the Company recorded an impairment charge of \$66.9 million as of July 27, 2008, which represented the difference between the estimated fair values of these long-lived assets as compared to their carrying values for certain asset groups located in Asia and Europe. In addition, an impairment charge of \$1.5 million was incurred in 2009 relating to the Manchester, U.K. facility. Fair values were determined based upon market conditions, the income approach which utilized cash flow projections, and other factors.

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### NOTE 14 - INCOME TAXES

The income (loss) before income taxes and minority interest consists of the following:

	Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
United States	\$(35,228)	\$(32,880)	\$16,529
Foreign	(1,876)	(179,289)	7,355
	<u>\$(37,104)</u>	<u>\$(212,169)</u>	<u>\$23,884</u>

The income tax provision (benefit) consists of the following:

	Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
Current:			
Federal	\$ -	\$ -	\$(8,430)
State	-	-	-
Foreign	7,266	(834)	6,213
	<u>7,266</u>	<u>(834)</u>	<u>(2,217)</u>
Deferred:			
Federal	-	-	-
State	-	-	-
Foreign	(2,943)	(1,944)	(961)
	<u>(2,943)</u>	<u>(1,944)</u>	<u>(961)</u>
Total	<u>\$4,323</u>	<u>\$(2,778)</u>	<u>\$(3,178)</u>

The income tax (benefit) provision differs from the amount computed by applying the statutory U.S. federal income tax rate to the income before taxes as a result of the following:

	Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
U.S. federal income tax at statutory rate	\$(12,986)	\$(74,259)	\$ 8,359
Goodwill and other impairments	-	42,416	-
Distributions from foreign subsidiaries	10,203	10,937	-
State income taxes, net of federal benefit	(447)	(1,255)	108
Change in valuation allowance	6,585	8,757	2,399
Foreign tax rate differential	1,917	9,982	(6,973)
Resolution and settlement of tax matters	(1,218)	(192)	(7,394)
Other, net	269	836	323
	<u>\$ 4,323</u>	<u>\$ (2,778)</u>	<u>\$(3,178)</u>

During the fiscal years ended November 1, 2009 and October 28, 2007, the Company recorded tax benefits in the amounts of \$1.2 million and \$7.4 million, respectively, relating to the resolutions and settlements of U.S. and foreign tax matters that were associated with uncertain tax positions in prior years.

The net deferred income tax asset consists of the following:

	<b>November 1, 2009</b>	<b>November 2, 2008</b>
<b>Deferred income tax assets:</b>		
Reserves not currently deductible	\$ 6,455	\$4,369
Net operating losses	65,123	52,143
Alternative minimum tax credits	2,926	2,926
Tax credit carryforwards	4,495	10,051
Other	4,531	4,175
	<u>83,530</u>	<u>73,664</u>
Valuation allowance	(54,734)	(48,149)
	<u>28,796</u>	<u>25,515</u>
<b>Deferred income tax liabilities:</b>		
Property, plant and equipment	(16,169)	(15,921)
Investments and other	(1,139)	(1,139)
Other	(824)	(1,307)
	<u>(18,132)</u>	<u>(18,367)</u>
<b>Net deferred income tax asset</b>	<u>\$10,664</u>	<u>\$7,148</u>
<b>Reported as:</b>		
Current deferred tax assets	\$ 3,264	\$2,843
Long-term deferred tax assets	8,887	6,118
Long-term deferred tax liabilities	(1,487)	(1,813)
	<u>\$10,664</u>	<u>\$7,148</u>

On July 13, 2006, the FASB issued FASB Interpretation Number 48 (FIN 48), "Accounting for Uncertainty in Income Taxes - an Interpretation of FASB Statement No. 109" (SFAS 109) (primarily codified under ASC 740). The interpretation contains a two-step approach to recognizing and measuring uncertain tax positions accounted for under ACS 740. The Company adopted this guidance as of the beginning of its 2008 fiscal year. The total amount of the liability accrued for unrecognized tax benefits as of the adoption date was approximately \$3.9 million, which includes interest and penalties. As compared to the Company's historical approach, the application of this guidance resulted in a net increase to accrued income taxes payable of approximately \$1.0 million (including interest and penalties of approximately \$0.2 million), and a decrease to retained earnings of the same amount. In addition, the majority of the liability for unrecognized tax benefits was reclassified from accrued income taxes to other long-term liabilities on the Company's consolidated balance sheet. As of the date of adoption of this guidance the Company has elected to include any applicable interest and penalties related to uncertain tax positions in its income tax provision in its consolidated statements of operations. The gross unrecognized tax benefits for income taxes associated with uncertain tax positions totaled approximately \$2.0 million (including interest and penalties of \$0.4 million) and \$3.1 million (including interest and penalties of \$1.1 million) at November 1, 2009 and November 2, 2008, respectively. If recognized, the benefits would favorably affect the Company's effective tax rate in future periods. As of November 1, 2009, the Company believes it is not reasonably possible that the total amounts of unrecognized benefits will significantly increase or decrease in the next twelve months. Currently, the statutes of limitations remain open subsequent to and including 2006 in the U.S., 2007 in the U.K., 2008 in Germany and 2005 in Korea.

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A reconciliation of the beginning and ending amount of unrecognized tax benefits, excluding interest and penalties, is as follows:

	<b>Year Ended</b>	
	<b>November 1, 2009</b>	<b>November 2, 2008</b>
Balance at beginning of year	\$1,988	\$2,280
Decreases for tax positions in prior years	-	(301)
Additions based on current year tax positions	377	294
Settlements	(685)	(194)
Lapse of statutes of limitations	(107)	(91)

As of November 1, 2009 the Company had available U.S. Federal tax operating loss and tax credit carryforwards subject to expiration as follows:

<u>Year of Expiration</u>	<u>Operating Losses</u>	<u>Tax Credits</u>
2018	\$ -	\$1,272
2022	7,797	-
2023	36,242	-
2024	22,325	300
2025	12,130	510
2026	4,888	378
2027	1,506	138
2028	7,529	114
2029	12,630	-
	<u>\$105,047</u>	<u>\$2,712</u>

The Company has established a valuation allowance for a portion of its deferred tax assets, because it is more likely than not that a portion of its net operating loss carryforwards may expire prior to utilization. The valuation allowance increased by \$6.6 million, \$8.8 million and \$2.4 million in fiscal 2009, 2008 and 2007, respectively.

As of November 1, 2009, the Company had \$2.9 million of alternative minimum tax credit carryforwards that are available to offset future federal taxes payable. The Company also has state tax credits available of \$1.8 million which, if they are not utilized, will begin to expire in 2010.

As of November 1, 2009, the undistributed earnings of foreign subsidiaries included in consolidated retained earnings amounted to \$81.2 million. During 2008 a decision was made to not indefinitely reinvest earnings in certain foreign jurisdictions. For the year ended November 2, 2008, \$12 million of earnings that were previously considered to be permanently reinvested in foreign operations were determined to no longer be indefinitely reinvested. This decision resulted in no impact to the consolidated statement of operations since the Company has a full valuation allowance against its net U.S. deferred tax assets. The remaining undistributed earnings of foreign subsidiaries are considered to be permanently reinvested. Accordingly, no provision has been made for taxes due on the remittance of these earnings. Should the Company elect in the future to repatriate the foreign earnings so invested, it may incur additional income tax expense on those foreign earnings.

PKLT, the Company's FPD manufacturing facility in Taiwan, is accorded a tax holiday, which expires in December 2012. In addition, the Company has been accorded a tax holiday in China which is expected to expire in 2011. These tax holidays had no dollar or per share effect in the fiscal years ended November 1, 2009, November 2, 2008 and October 28, 2007. In Korea, various investment tax credits have been utilized to reduce the Company's effective income tax rate.

Income tax payments were \$9.6 million, \$4.4 million and \$12.8 million in fiscal 2009, 2008 and 2007, respectively. Cash received for refunds of income taxes paid in prior years amounted to \$0.1 million, \$1.3 million and \$0.1 million in fiscal 2009, 2008 and 2007, respectively.

The Company has elected the alternative transition method provided in FASB Staff Position No. 123(R)-3, "Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards," for calculating the tax effects of share-based compensation. As of November 1, 2009 the deferred income tax expenses resulting from this method amounted to \$1.5 million.

#### NOTE 15 - EARNINGS PER SHARE

The calculation of basic and diluted earnings per share is presented as follows:

	<u>Year Ended</u>		
	<u>November 1, 2009</u>	<u>November 2, 2008</u>	<u>October 28, 2007</u>
Net income (loss)	\$ (41,910)	\$ (210,765)	\$ 24,523
Effect of dilutive securities:			
Interest expense on convertible notes, net of related tax effect	-	-	4,401

Earnings for diluted earnings (loss) per share	<u>\$(41,910)</u>	<u>\$(210,765)</u>	<u>\$28,924</u>
Weighted average common shares computations:			
Weighted average common shares used for basic earnings (loss) per share	43,210	41,658	41,539
Effect of dilutive securities:			
Convertible notes	-	-	9,441
Employee stock options	-	-	302
Dilutive potential common shares	<u>-</u>	<u>-</u>	<u>9,743</u>
Weighted average common shares used for diluted earnings (loss) per share	<u>43,210</u>	<u>41,658</u>	<u>51,282</u>
Basic earnings per share	\$(0.97)	\$(5.06)	\$0.59
Diluted earnings per share	\$(0.97)	\$(5.06)	\$0.56

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In periods in which the Company incurred a net loss, the assumed exercise of certain outstanding employee stock options and the vesting of restricted shares had an antidilutive effect. The assumed exercise of all outstanding common stock warrants and the conversion of convertible senior notes to common stock would also have been antidilutive in the periods that the Company reported a net loss. The table below shows the amount of incremental weighted-average shares of these employee stock options, restricted shares, common stock warrants, and convertible debt had the Company recognized sufficient net income in the reporting periods presented.

	Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
Convertible notes	1,429	4,409	304
Common stock warrants	804	-	-
Share based payment awards	793	20	-
Total potentially dilutive shares excluded	<u>3,026</u>	<u>4,429</u>	<u>304</u>

The table below shows the outstanding weighted-average employee stock options, restricted shares and common stock warrants that were excluded from the calculation of diluted earnings per share because their exercise price exceeded the average market value of the common shares for the period or, under application of the treasury stock method, they were otherwise determined to be antidilutive.

	Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
Share based payment awards	2,243	2,340	2,040
Common stock warrants	2	-	-
Total potentially dilutive shares excluded	<u>2,245</u>	<u>2,340</u>	<u>2,040</u>

In the first quarter of fiscal year 2010, the Company awarded approximately 0.8 million stock options to its employees and directors.

#### NOTE 16 - COMMITMENTS AND CONTINGENCIES

At November 1, 2009, the Company had outstanding purchase commitments of approximately \$42 million, which includes approximately \$35 million related to capital expenditures.

Financial instruments that potentially subject the Company to credit risk consist principally of trade accounts receivable and temporary cash investments. The Company sells its products primarily to manufacturers in the semiconductor and computer industries in North America, Europe and Asia. The Company believes that the concentration of credit risk in its trade receivables is substantially mitigated by the

Company's ongoing credit evaluation process and relatively short collection terms. The Company does not generally require collateral from customers. The Company establishes an allowance for doubtful accounts based upon factors surrounding the credit risk of specific customers, historical trends and other information.

The Company is subject to various claims that arise in the ordinary course of business. The Company believes such claims, individually or in the aggregate, will not have a material adverse effect on its consolidated financial statements.

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#### NOTE 17 - GEOGRAPHIC AND SIGNIFICANT CUSTOMER INFORMATION

The Company operates as a single operating segment as a manufacturer of photomasks, which are high precision quartz plates containing microscopic images of electronic circuits for use in the fabrication of semiconductors. Geographic net sales are based primarily on where the Company's manufacturing facility is located. The Company's 2009, 2008 and 2007 net sales and total long-lived assets by geographic area were as follows:

	Fiscal Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
<b>Net sales</b>			
Asia	\$223,138	\$259,293	\$242,788
Europe	38,344	66,398	71,421
North America	99,871	96,857	107,270
	<u>\$361,353</u>	<u>\$422,548</u>	<u>\$421,479</u>
	November 1, 2009	November 2, 2008	October 28, 2007
<b>Long-lived assets</b>			
Asia	\$199,179	\$228,009	\$329,619
Europe	9,579	14,134	67,084
North America	139,131	194,385	134,875
	<u>\$347,889</u>	<u>\$436,528</u>	<u>\$531,578</u>

Samsung Electronics Co., Ltd. accounted for approximately 19% of the Company's net sales in fiscal year 2009, and 25% of the Company's net sales in fiscal years 2008 and 2007.

#### NOTE 18 - COMPREHENSIVE INCOME

The Company's comprehensive income as reported in the consolidated statements of shareholders' equity consists of net earnings (losses) and all changes in equity during a period except those resulting from investments by owners and distributions to owners. The components of other comprehensive income for the last three fiscal years, net of tax, were as follows:

	Fiscal Year Ended		
	November 1, 2009	November 2, 2008	October 28, 2007
Foreign currency translation adjustment	\$10,712	\$(62,234)	\$13,496
Change in fair value and amortization of cash flow hedges	576	193	(1,024)
Change in unrealized gains on investments	62	(279)	(458)
Other	(238)	2	(269)
	<u>\$11,112</u>	<u>\$(62,318)</u>	<u>\$11,745</u>
Other comprehensive income (loss), net of tax			

The foreign currency translation adjustment of \$62.2 million for the fiscal year ended November 2, 2008 was primarily due to the weakening of the Korean won against the U.S. dollar.

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## NOTE 19 - OTHER RELATED PARTY TRANSACTIONS

The Chairman of the Board and Chief Executive Officer of the Company is also the Chairman of the Board and majority shareholder of a company that provides secure managed information technology services to Photronics. Another director of the Company is also a shareholder, CEO and Executive Vice Chairman of this company. Since 2002, the Company has entered into various service contracts with this company to provide services to all of the Company's worldwide facilities. The Company incurred expenses of \$2.8 million in 2009, \$3.3 million in 2008, and \$3.8 million in 2007 related to services provided by the company. As of November 1, 2009, the Company had contracted with this service provider through 2010 for a cost of approximately \$2.1 million.

The Company purchases photomask blanks from a company of which an officer of the Company is a significant shareholder. The Company purchased \$25.5 million, \$28.5 million, and \$21.6 million of photomask blanks from this company in 2009, 2008, and 2007, respectively, for which the amount owed to this company was \$6.5 million at November 1, 2009 and \$6.8 million at November 2, 2008.

The Company believes that the terms of the transactions described above with related parties were negotiated at arm's-length and were no less favorable to the Company than the Company could have obtained from unrelated third parties. See Note 4 for other related party transactions.

## NOTE 20 - FAIR VALUE MEASUREMENTS

The Company adopted SFAS No. 157 "Fair Value Measurements" (primarily codified under ASC 820) as of November 3, 2008 for all financial assets and liabilities measured on both a recurring and nonrecurring basis, and for nonfinancial assets and liabilities measured on a recurring basis. This guidance defines fair value as the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date. It further prescribes that an orderly transaction is a transaction that assumes exposure to the market for a period prior to the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities (i.e. it is not a forced transaction). The transaction to sell the asset or transfer the liability is a hypothetical transaction at the measurement date, considered from the perspective of a market participant that holds the asset or owes the liability. Therefore, the objective of a fair value measurement is to determine the price that would be received to sell the asset or paid to transfer the liability (an exit price) at the measurement date.

A fair value measurement further assumes that the hypothetical transaction occurs in the principal (or if no principal market exists, the most advantageous) market for the asset or liability. Further, a fair value measurement assumes a transaction involving the highest and best use of an asset and the consideration of assumptions that would be made by market participants when pricing an asset or liability, such as transfer restrictions (in the case of an asset) or nonperformance risk.

This guidance establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The fair value hierarchy gives the highest priority to unadjusted, quoted market prices in active markets for identical assets or liabilities (including when the liabilities are traded as assets) while giving the lowest priority to unobservable inputs, which are inputs that reflect the Company's assumptions about the factors that market participants would use in valuing assets or liabilities, based upon the best information available under existing circumstances. In cases when the inputs used to measure fair value fall in different levels of the fair value hierarchy, the level within which the fair value measurement in its entirety falls is determined based on the lowest level input that is significant to the fair value measurement in its entirety. Assessing the significance of a particular input to the fair value measurement in its entirety requires judgment, including the consideration of factors specific to the asset or liability. The hierarchy consists of the following three levels:

Level 1 - Inputs are prices in active markets that are accessible at the measurement date.

Level 2 - Inputs other than quoted prices included within Level 1 are observable for the asset or liability, either directly or indirectly. The Company's Level 2 liability consists of its common stock warrants.

Level 3 - Inputs are unobservable inputs for the asset or liability. The Company's Level 3 assets consist of a foreign bond fund that is reported in other current assets.

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### Assets and Liabilities Measured at Fair Value on a Recurring Basis

The table below present assets and liabilities as of November 1, 2009 that are measured at fair value on a recurring basis.

	Quoted Prices in Active Markets for Identical Instruments (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Foreign bond fund	\$ -	\$ -	\$ 148	\$ 148
Total assets	\$ -	\$ -	\$ 148	\$ 148

Common stock warrants	\$ -	\$(3,205)	\$ -	\$(3,205)
Total liabilities	\$ -	\$(3,205)	\$ -	\$(3,205)

The foreign bond fund above represents the Company's investment in a fund for which there is currently no active market. The fair value presented represents the Company's estimate of its value based upon management's judgment. The fair value of the warrant liability was determined using the Black-Scholes option pricing model. Significant inputs to the model include the market price and volatility of the Company's common stock at the measurement date.

Unrealized losses related to the foreign bond fund are included in accumulated other comprehensive income. Gains and losses related to exercises of, and fair value adjustments to, the warrant liability are included in other income (expense), net.

#### *Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis*

Under the Company's restructuring initiatives discussed in Note 12, certain long-lived assets have been measured at and reported at their fair values. However, these are not included in the table presented above as the Company, as was allowed under FSP FAS 157-2 (codified under ASC 820), has elected to defer the effective date for applying this guidance to nonfinancial assets and liabilities that are recognized or disclosed at fair value on a nonrecurring basis until its fiscal year ending October 31, 2010. This deferral applies to such items as nonfinancial assets initially measured at fair value in a business combination and nonfinancial long-lived asset groups measured at fair value for an impairment assessment that are not measured at fair value in subsequent periods. The Company does not anticipate that its adoption of this guidance will have a material effect on its consolidated financial statements.

#### *Fair Value of Other Financial Instruments*

The fair values of the Company's cash and cash equivalents, accounts receivable, accounts payable, and certain other current assets and current liabilities approximate their carrying value due to their short-term maturities. The fair value of the Company's variable rate long-term debt approximates its carrying value due to the variable nature of the underlying interest rates. As of November 1, 2009, the estimated fair value of the Company's outstanding 5.5% convertible senior notes was approximately \$63.3 million.

#### **NOTE 21 - QUARTERLY RESULTS OF OPERATIONS (UNAUDITED)**

The following table sets forth certain unaudited quarterly financial data:

	<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>	<u>Year</u>
<b>Fiscal 2009:</b>	<b>(a)</b>	<b>(b) (c)</b>	<b>(d) (e)</b>	<b>(f) (g) (h)</b>	<b>(h) (i) (j)</b>
Net sales	\$ 88,042	\$ 83,232	\$ 95,401	\$94,678	\$361,353
Gross margin	10,559	11,440	18,054	17,018	57,071
Net income (loss)	(10,233)	(10,072)	(22,847)	1,242	(41,910)
Earnings (loss) per share:					
Basic	\$(0.25)	\$(0.24)	\$(0.55)	\$ 0.03	\$(0.97)
Diluted	\$(0.25)	\$(0.24)	\$(0.55)	\$(0.11)	\$(0.97)
<b>Fiscal 2008:</b>			<b>(k)</b>	<b>(l)</b>	<b>(k) (l)</b>
Net sales	\$103,215	\$110,330	\$ 105,697	\$103,306	\$ 422,548
Gross margin	20,596	20,274	13,884	17,953	72,707
Net income (loss)	(3,340)	(2,069)	(205,592)	236	(210,765)
Earnings (loss) per share:					
Basic	\$(0.08)	\$(0.05)	\$(4.93)	\$0.01	\$(5.06)
Diluted	\$(0.08)	\$(0.05)	\$(4.93)	\$0.01	\$(5.06)

(a) Includes consolidation and restructuring charges of \$1.7 million (\$1.3 million net of tax) in connection with the closure of the Company's Manchester, U.K. manufacturing facility.

(b) Includes consolidation and restructuring charges of \$0.4 million (\$0.3 million net of tax) in connection with the closure of the Company's Manchester, U.K. manufacturing facility.

- (c) Includes impairment charge of \$1.5 million (\$1.1 million net of tax) relating to the Company's Manchester, U.K. manufacturing facility.
- (d) Includes consolidation and restructuring charges of \$10.7 million (\$10.5 million net of tax) in connection with the closures of the Company's Shanghai, China and Manchester, U.K. manufacturing facilities.
- (e) Includes non-cash mark-to-market charge of \$6.8 million net of tax in connection with warrants issued to purchase the Company's common stock.
- (f) Includes consolidation and restructuring charges of \$0.8 million (\$0.6 million net of tax) in connection with the closures of the Company's Shanghai, China and Manchester, U.K. manufacturing facilities.
- (g) Includes non-cash mark-to-market gain of \$6.5 million net of tax in connection with warrants issued (and a portion cancelled) to purchase the Company's common stock and deferred financing fees write-off of \$3.7 million net of tax in connection with repayment of debt.
- (h) Includes gain on sale of the Company's Manchester, U.K. facility of \$2.0 million (\$1.5 million net of tax).
- (i) Includes consolidation and restructuring charges of \$13.6 million (\$12.9 million net of tax) in connection with the closures of the Company's Shanghai, China and Manchester, U.K. manufacturing facilities.
- (j) Includes non-cash mark-to-market charge of \$0.3 million net of tax, in connection with warrants issued to purchase the Company's common stock.
- (k) Includes a \$137.3 million net of tax impairment of all of the Company's goodwill and a \$60.9 million net of tax impairment of long-lived assets related to certain asset groups located in Europe and Asia.
- (l) Includes \$0.4 million net of tax restructuring charge in connection with the closure of the Company's Manchester, U.K. manufacturing facility.

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## NOTE 22 - RECENT ACCOUNTING PRONOUNCEMENTS

In September 2009, the FASB issued Accounting Standards Update (ASU) No. 2009-13 which provides amended guidance for multiple-deliverable revenue arrangements. ASU No. 2009-13 changes the criteria for separating consideration in multiple-deliverable arrangements by establishing a selling price hierarchy for determining the selling price of a deliverable. Under ASU No. 2009-13, the selling price for each deliverable in a multiple-deliverable arrangement will, in order of preference and when available, be based on vendor specific objective evidence, third party evidence, or estimated selling price. ASU No. 2009-13 prescribes that estimated selling price be determined in a manner that is consistent with that used to determine the price to sell the deliverable on a stand alone basis, and eliminates the residual method of allocation and requires that arrangement consideration be allocated at the inception of the arrangement to all deliverables using the relative selling price method. ASU No. 2009-13 also significantly expands the disclosures related to multiple-deliverable arrangements, and is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 2010 with early adoption permitted. The Company does not expect that the adoption of ASU No. 2009-13 will have a material impact on its consolidated financial statements.

In August 2009, the FASB issued ASU No. 2009-05 which provides amended guidance for the fair value measurement of liabilities. ASU No. 2009-05 clarifies, among other things, that in circumstances in which a quoted market price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using valuation techniques specified in the ASU. ASU No. 2009-05 was adopted by the Company on November 2, 2009. The adoption of ASU No. 2009-05 did not have a material impact on the Company's consolidated financial statements.

In June 2009 the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles - a replacement of FASB Statement No. 162" (primarily codified under ASC 105). With limited "grandfathered" exceptions, SFAS No. 168 establishes the FASB Accounting Standards Codification, along with rules and interpretative releases of the Securities and Exchange Commission, as being the sources of authoritative U.S. generally accepted accounting principles (GAAP) recognized by the FASB to be applied to SEC registrants. SFAS No. 168 will also supersede SFAS No. 162 "The Hierarchy of Generally Accepted Accounting Principles" as all of the contents of the FASB Accounting Standards Codification carries the same level of authority, thereby modifying the hierarchy of GAAP to include only two levels: authoritative and non-authoritative. SFAS No. 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The Company adopted this guidance during the three month period ended November 1, 2009 and its adoption did not materially impact its consolidated financial statements.

In June 2009 the FASB issued SFAS No. 167, Amendments to FASB Interpretation No. 46(R) (primarily codified under ASC 810). SFAS No. 167 amends Interpretation 46(R) to require an enterprise to perform an analysis to determine whether its variable interest or interests give it a controlling financial interest in a variable interest entity. This analysis is to identify the primary beneficiary of the variable interest entity as being the enterprise that has certain characteristics described in SFAS No. 167. SFAS No. 167, in addition to other requirements, requires an enterprise to assess whether it has an implicit financial responsibility to ensure that a variable interest entity operates as designed when determining whether it has the power to direct the activities of the variable interest entity that most significantly impact the entity's financial performance and, mandates ongoing reassessments of whether an enterprise is the primary beneficiary of a variable interest entity. SFAS No. 167 is effective for financial statements issued for fiscal years beginning after November 15, 2009 and interim financial statements within those fiscal years. The Company is currently evaluating the impact, if any, this guidance will have on its consolidated financial statements.

In May 2008, the FASB issued FSP No. APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement) (codified under ASC 470)." FSP No. APB 14-1 requires that issuers of convertible debt instruments that may be settled in cash upon conversion separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP No. APB 14-1 is effective for fiscal years beginning after December 15, 2008 and interim periods within those fiscal years, and is required to be retrospectively applied. The Company adopted this guidance on November 2, 2009. Its adoption had no effect on the Company's consolidated financial statements.

In February 2008, the FASB issued FSP No. 157-2 "Effective Date of FASB Statement No.157" (codified under ASC 820), which delayed the effective date of FASB Statement No. 157 "Fair Value Measurements" for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company elected to defer the application of SFAS No. 157 to any nonfinancial

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assets and nonfinancial liabilities to which it would apply. The deferral expires in the Company's first fiscal quarter of 2010, when the Company will adopt the deferred provisions of this guidance. The adoption of this guidance is not expected to have a material effect on the Company's consolidated financial statements.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements - an amendment of Accounting Research Bulletin No. 51" (codified under ASC 810). SFAS No. 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. The Company adopted this guidance on November 2, 2009. Its adoption resulted in the reclassification of its \$49.9 million of minority interest in the consolidated balance sheet to shareholders' equity.

In December 2007, the FASB issued SFAS No. 141(R), "Business Combinations" (codified under ASC 805). SFAS No. 141(R) establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. The statement also provides guidance for recognizing and measuring the goodwill acquired in the business combination and determines what information to disclose to enable users of the financial statement to evaluate the nature and financial effects of the business combination. SFAS No. 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company adopted this guidance on November 2, 2009. Its adoption had no effect on its consolidated financial statements.

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

None

## **ITEM 9A. CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

The Company has established and currently maintains disclosure controls and procedures designed to ensure that information required to be disclosed in its reports filed under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to management, including the Company's chief executive officer and chief financial officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

The Company's management, with the participation of the Company's chief executive officer and chief financial officer, evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the chief executive officer and chief financial officer concluded that the Company's disclosure controls and procedures, as of the end of the period covered by this report, were designed and are functioning effectively to provide reasonable assurance that the information required to be disclosed by the Company in reports filed under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and (ii) accumulated and communicated to management, including the chief executive officer and chief financial officer, as appropriate to allow timely decisions regarding disclosure.

### **Changes in Internal Control over Financial Reporting**

There was no change in the Company's internal control over financial reporting during the fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

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## **Management's Annual Report on Internal Control over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Securities Exchange Act of 1934. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Management assessed the effectiveness of the Company's internal control over financial reporting as of November 1, 2009 based on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in "Internal Control - Integrated Framework." Management, under the supervision and with the participation of the Company's chief executive officer and chief financial officer, assessed the effectiveness of the Company's internal control over financial reporting was effective as of November 1, 2009.

The Company's independent registered public accounting firm, Deloitte & Touche LLP, has audited the effectiveness of the Company's internal control over financial reporting as of November 1, 2009, as stated in their attestation report on page 34 of this Form 10-K.

January 8, 2010

### **ITEM 9B. OTHER INFORMATION**

On January 6, 2009, Photronics, Inc. ("Photronics") and Soo Hong Jeong extended for one additional year the Employment Agreement of Soo Hong Jeong, Chief Operating Officer, President, Asia Operations effective October 28, 2009 (October 28, 2009 through October 27, 2010). The Employment Agreement was originally entered into between Photronics and Mr. Jeong on August 24, 2001, and was subsequently amended on March 18, 2004, November 28, 2005, June 9, 2006, December 29, 2006, November 6, 2007 and October 28, 2008. The Extension Letter Agreement was executed by Photronics on January 6, 2009 and is attached as Exhibit 10.23 to this Form 10-K.

## **PART III**

### **ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

The information as to Directors required by Item 401, 405 and 407(c)(3)(d)(4) and (d)(5) of Regulation S-K is set forth in the Company's 2010 definitive Proxy Statement which will be filed with the Securities and Exchange Commission pursuant to Regulation 14A within 120 days after the end of the fiscal year covered by this Form 10-K under the caption "PROPOSAL 1 - ELECTION OF DIRECTORS," "SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE" and in paragraph three under the caption "MEETINGS AND COMMITTEES OF THE BOARD" and is incorporated in this report by reference. The information as to Executive Officers is included in the Company's 2010 definitive Proxy Statement under the caption "EXECUTIVE OFFICERS" and is incorporated in this report by reference.

The Company has adopted a code of ethics that applies to its principal executive officer, principal financial officer and principal accounting officer or controller. A copy of the code of ethics may be obtained, free of charge, by writing to the General Counsel of Photronics, Inc., at 15 Secor Road, Brookfield, Connecticut 06804.

### **ITEM 11. EXECUTIVE COMPENSATION**

The information required by Item 402 of Regulation S-K and paragraph (e)(4) and (e)(5) of Item 407 is set forth in the Company's 2010 definitive Proxy Statement under the captions "EXECUTIVE COMPENSATION," "CERTAIN AGREEMENTS", "DIRECTORS' COMPENSATION", "COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION" and "COMPENSATION COMMITTEE REPORT," respectively, and is incorporated in this report by reference.

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### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED SHAREHOLDER MATTERS**

The information required by Items 403 and 201(d) of Regulation S-K is set forth in the Company's 2010 definitive Proxy Statement under the captions "Ownership of Common Stock by Directors, Officers and Certain Beneficial Owners" and "Equity Compensation Plan Information," respectively, and is incorporated in this report by reference.

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE**

The information required by Item 404 of Regulation S-K and Item 407(a) of Regulation S-K is set forth in the Company's 2010 definitive Proxy Statement under the captions "MEETINGS AND COMMITTEES OF THE BOARD" and "CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS" and is incorporated in this report by reference.

### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by Item 9(e) of Schedule 14A is set forth in the Company's 2010 definitive Proxy Statement under the captions "FEES PAID TO THE INDEPENDENT AUDITORS" and "AUDIT COMMITTEE REPORT," respectively, and is incorporated in this report by reference.

## **PART IV**

## ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following documents are filed as part of this report:

	<b>Page No.</b>
1. Financial Statements:	
Report of Independent Registered Public Accounting Firm	34
Consolidated Balance Sheets at November 1, 2009 and November 2, 2008	35
Consolidated Statements of Operations for the years ended November 1, 2009, November 2, 2008 and October 28, 2007	36
Consolidated Statements of Shareholders' Equity for the years ended November 1, 2009, November 2, 2008 and October 28, 2007	37
Consolidated Statements of Cash Flows for the years ended November 1, 2009, November 2, 2008 and October 28, 2007	38
Notes to Consolidated Financial Statements	39
2. Financial Statement Schedules:	
Report of Independent Registered Public Accounting Firm on Financial Statement Schedule for the years ended November 1, 2009, November 2, 2008 and October 28, 2007	73
Schedule II, Valuation Account - Valuation and Qualifying Accounts for the years ended November 1, 2009, November 2, 2008 and October 28, 2007	73
All other schedules are omitted because they are not applicable.	
3. Exhibits	69

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### EXHIBITS INDEX

<b>Exhibit Number</b>	<b>Description</b>
3.1	Certificate of Incorporation as amended July 9, 1986, April 9, 1990, March 16, 1995, November 13, 1997, April 15, 2002 and June 20, 2005 (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the fiscal year ended October 28, 2007).
3.2	By-laws of the Company, (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-1, File Number 33-11694, which was declared effective by the Commission on March 10, 1987).
4.1	Form of Indenture between the Company and the Bank of New York, as Trustee (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 File Number 333-160235 which was filed on June 25, 2009).
4.2	Indenture dated September 16, 2009 between the Company and the Bank of New York, as Trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8K filed September 17, 2009 (Commission File Number 0-15451)).
4.3	Supplement to Indenture dated September 16, 2009 between the Company and the Bank of New York, as Trustee relating the issuance of the Company's 5.5% Convertible Notes due 2014 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8K filed September 17, 2009 (Commission File Number 0-1541)).
4.4	The Company will furnish to the Commission upon request any other debt instrument referred to in Item 601(b)(4)(iii)(A) of Regulation S-K.
10.1	Master Service Agreement dated January 11, 2002 between the Company and RagingWire Telecommunications, Inc.*

- 10.2 Underwriting Agreement between the Company and Morgan Stanley & Co. Incorporated dated September 10, 2009 relating to the issuance of the Company's 5.5% Convertible Notes due 2014 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8K filed September 11, 2009 (Commission File Number 0-1541)).
- 10.3 Underwriting Agreement between the Company and Morgan Stanley & Co. Incorporated dated September 10, 2009 relating to the issuance of 9,638,554 shares of common stock (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8K filed September 11, 2009 (Commission File Number 0-1541)).
- 10.4 Warrant Agreement between the Company and Intel Capital Corporation dated September 10, 2009 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8K filed September 11, 2009 (Commission File Number 0-1541)).
- 10.5 Warrant Agreement between the Company and Intel Capital Corporation dated September 10, 2009 (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8K filed September 11, 2009 (Commission File Number 0-1541)).
- 10.6 The Company's 1992 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.24 to the Company's Registration Statement on Form S-8, File Number 33-47446 which was filed April 24, 1994).<sup>+</sup>
- 10.7 Amendment to the Employee Stock Purchase Plan as of March 24, 2004 (incorporated by reference to Exhibit 10.10 to the Company's Annual Report on Form 10-K for the fiscal year ended October 31, 2004 (Commission File Number 0-15451)).<sup>+</sup>
- 10.8 The Company's 2007 Long-Term Equity Incentive Plan (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-8, Registration No. 333).
- 10.9 Consulting Agreement between the Company and Constantine S. Macricostas, dated July 11, 2005 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed July 13, 2005 (Commission File Number 0-15451)).<sup>+</sup>
- 10.10 Amendment No. 1 to the Consulting Agreement between Constantine S. Macricostas and the Company dated November 10, 2008 (incorporated by reference to Exhibit 10.11 to the Company's Annual Report on Form 10K for the fiscal year ended November 2, 2008 (Commission File No. 0-15451)).<sup>+</sup>

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- 10.11 Separation and Consulting Agreement between the Company and Michael J. Luttati dated July 12, 2008 (incorporated by reference to Exhibit 10.30 to the Company's Quarterly Report on Form 10-Q for the quarter ended July 27, 2008 (Commission File No. 0-15451)).
  - 10.12 Executive Employment Agreement between the Company and Sean T. Smith dated February 20, 2003.<sup>++</sup>
  - 10.13 Limited Liability Company Operating Agreement of MP Mask Technology Center, LLC between Micron Technology, Inc. ("Micron") and Photronics, Inc. ("Photronics") dated May 5, 2006 (incorporated by reference to Exhibit 10.17 to the Company's Quarterly Report on Form 10-Q filed on June 8, 2006 (Commission File No. 0-15451)).<sup>#</sup>
  - 10.14 Contribution and Units Purchase Agreement between Micron, Photronics and MP Mask Technology Center, LLC ("MP Mask") dated May 5, 2006 (incorporated by reference to Exhibit 10.18 to the Company's Quarterly Report on Form 10-Q filed on June 8, 2006 (Commission File No. 0-15451)).<sup>#</sup>
  - 10.15 Technology License Agreement among Micron, Photronics and MP Mask dated May 5, 2006 (incorporated by reference to Exhibit 10.19 to the Company's Quarterly Report on Form 10-Q filed on June 8, 2006 (Commission File No. 0-15451)).<sup>#</sup>
  - 10.16 Photronics to Micron Supply Agreement between Micron and Photronics dated May 5, 2006 (incorporated by reference to Exhibit 10.21 to the Company's Quarterly Report on Form 10-Q filed on June 8, 2006 (Commission File No. 0-15451)).<sup>#</sup>
  - 10.17 Company to Photronics Supply Agreement between MP Mask and Photronics dated May 5, 2006 (incorporated by reference to Exhibit 10.22 to the Company's Quarterly Report on Form 10-Q filed on

- 10.18 Operating Lease Agreement dated May 19, 2009 between the Company and Micron (incorporated by reference to Exhibit 8.02 to the Company's Current Report on Form 8K filed on July 6, 2009 (Commission File No. 0-15451)).
- 10.19 Executive Employment Agreement between the Company and Soo Hong Jeong dated August 24, 2001, as amended March 18, 2004, November 28, 2005 and June 9, 2006 (incorporated by reference to Exhibit 10.23 to the Company's Current Report on Form 10-Q filed on September 7, 2006 (Commission File No. 0-15451)).
- 10.20 Extension of Executive Employment Agreement between the Company and Soo Hong Jeong effective October 29, 2006 and ending on October 28, 2007 (incorporated by reference to Exhibit 1.01 to the Company's Current Report on Form 8-K filed on January 3, 2007 (Commission File No. 0-15451)).
- 10.21 Extension of Executive Employment Agreement between the Company and Soo Hong Jeong effective October 28, 2007 and ending October 27, 2008 (incorporated by reference to Exhibit 1.01 to the Company's Current Report on Form 8-K Filed on November 8, 2007 (Commission File No. 0-15451)).
- 10.22 Extension of Executive Employment Agreement between the Company and Soo Hong Jeong effective October 28, 2008 and ending October 27, 2009 (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed on November 17, 2008 (Commission File No. 0-15451)).
- 10.23 Extension of Executive Employment Agreement between the Company and Soo Hong Jeong effective October 28, 2009 and ending October 27, 2010.\*
- 10.24 Executive Employment Agreement between the Company and Christopher J. Proglar, Vice President, Chief Technology Officer dated September 10, 2007 (incorporated by reference to Exhibit 10.24 to the Company's Current Report on Form 10-K filed on January 11, 2008 (Commission File No. 0-15451)).<sup>+</sup>
- 10.25 Credit Agreement dated as of June 6, 2007 among Photronics, Inc., the foreign subsidiary borrowers party thereto, the lenders party thereto and JPMorgan Chase Bank, National Association (as Administrative Agent), Citizens Bank of Massachusetts, HSBC Bank USA, National Association and Citibank, N.A. and JPMorgan Securities, Inc. as Sole Bookrunner and Sole Lead Arranger (incorporated by reference to Exhibit 10.27 to the Company's Form 10-Q for the quarter ended July 29, 2007 (Commission File No. 0-15451)).
- 10.26 Amendment No. 1 to the Credit Agreement dated April 25, 2008 (incorporated by reference to Exhibit 9.01 of the Company's Form 8-K filed on April 30, 2008 (Commission File No. 0-15451)).

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- 10.27 Amendment No. 2 to the Credit Agreement dated October 31, 2008 (incorporated by reference to Exhibit 10.29 of the Company's Annual Report on Form 10K for the fiscal year ended November 2, 2008 (Commission File No. 0-15451)).
  - 10.28 Amendment No. 3 to the Credit Agreement dated December 4, 2008 (incorporated by reference to Exhibit 10.30 of the Company's Annual Report on Form 10K for the fiscal year ended November 2, 2008 (Commission File No. 0-15451)).
  - 10.29 Amendment No. 4 to the Credit Agreement dated December 12, 2008 (incorporated by reference to Exhibit 10.31 of the Company's Annual Report on Form 10K for the fiscal year ended November 2, 2008 (Commission File No. 0-15451)).
  - 10.30 Amendment No. 5 to the Credit Agreement dated as of May 15, 2009 (incorporated by reference to Exhibit 10.39 to the Company's Quarterly Report on Form 10Q for the quarterly period ended May 3, 2009 (Commission File No. 0-15451)).
  - 10.31 Amendment No. 6 to the Credit Agreement dated as of June 8, 2009 (incorporated by reference to Exhibit 10.44 to The company's Quarterly Report on Form 10Q for the quarterly period ended May 3, 2009 (Commission File No. 0-15451)).
  - 10.32 Amendment No. 7 to the Credit Agreement dated September 7, 2009 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8K filed September 17, 2009 (Commission File No. 0-15451)).
  - 10.33 Amendment No. 8 to the Credit Agreement dated as of October 26, 2009.\*



- 10.34 Security Agreement dated December 12, 2008 by and among the Company, the subsidiaries of the Company listed on the signature page and JPMorgan Chase Bank National Association (incorporated by reference to Exhibit 10.38 to the Company's Quarterly Report on Form 10Q for the quarterly period ended May 3, 2009 (Commission File Number 0-15451)).
- 10.35 Warrant Agreement dated May 15, 2009 by and among the Company and the Purchasers Named Therein (incorporated by reference to Exhibit 10.41 to the Company's Quarterly Report on Form 10Q for the quarterly period ended May 3, 2009 (Commission File No. 0-15451)).
- 10.36 Registration Rights Agreement dated as of May 15, 2009 by and among the Company and the Holders Named Therein (incorporated by reference to Exhibit 10.42 to the Company's Quarterly Report on Form 10Q for the quarterly period ended May 3, 2009 (Commission File No. 0-15451)).
- 10.37 Loan Agreement dated as of June 8, 2009 among the Company, the Lenders Party Thereto and JPMorgan Chase Bank, National Association as administrative agent and collateral agent (incorporated by reference to Exhibit 10.43 to the Company's Quarterly Report on Form 10Q for the quarterly period ended May 3, 2009 (Commission File No. 0-15451)).
- 10.38 Amendment No. 1 to the Loan Agreement dated as of September 2, 2009 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8K filed on September 17, 2009 (Commission File No. 0-15451)).
- 10.39 Amendment No. 2 to the Loan Agreement dated as of October 26, 2009.\*
- 21 List of Subsidiaries of the Company.\*
- 23 Consent of Deloitte & Touche LLP.\*
- 31.1 Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\*
- 31.2 Certification of Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\*
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.\*
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.\*

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+ Represents a management contract or compensatory plan or arrangement.

# Portions of this exhibit have been omitted pursuant to a request for confidential treatment filed with the Securities and Exchange Commission.

\* Represents an exhibit that is filed with this Annual Report on Form 10-K.

The Company will provide a copy of any exhibit upon receipt of a written request for the particular exhibit or exhibits desired. All requests should be addressed to the Company's vice president of corporate communications at the address of the Company's principal executive offices.

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## Report of Independent Registered Public Accounting Firm on Financial Statement Schedule

Board of Directors and Shareholders  
Photronics, Inc.  
Brookfield, Connecticut

We have audited the consolidated financial statements of Photronics, Inc. and subsidiaries (the "Company") as of November 1, 2009 and November 2, 2008, and for each of the three fiscal years ended November 1, 2009, November 2, 2008 and October 28, 2007, and the

Company's internal control over financial reporting as of November 1, 2009, and have issued our report thereon dated January 7, 2010; such report is included elsewhere in this Form 10-K. Our audits also included the consolidated financial statement schedule of the Company listed in Item 15. This consolidated financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion based on our audits. In our opinion, such consolidated financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ Deloitte & Touche LLP  
Stamford, Connecticut  
January 7, 2010

## Schedule II

### Valuation and Qualifying Accounts for the Years Ended November 1, 2009, November 2, 2008 and October 28, 2007 (in thousands)

	Balance at Beginning of Year	Charge to Costs and Expenses	Deductions	Balance at End of Year
<b>Allowance for Doubtful Accounts</b>				
Year ended November 1, 2009	\$ 2,788	\$ 538	\$(657)(a)	\$ 2,669
Year ended November 2, 2008	\$ 3,721	\$(481)	\$(452)(a)	\$ 2,788
Year ended October 28, 2007	\$ 4,471	\$ (25)	\$(725)(a)	\$ 3,721
<b>Deferred Income Tax Valuation Allowance</b>				
Year ended November 1, 2009	\$48,149	\$6,585	\$ -	\$54,734
Year ended November 2, 2008	\$39,392	\$8,757	\$ -	\$48,149
Year ended October 28, 2007	\$36,993	\$2,399	\$ -	\$39,392

(a) Uncollectible accounts written off

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## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

PHOTRONICS, INC.  
(Registrant)

By /s/ SEAN T. SMITH

January 8, 2010

Sean T. Smith  
Senior Vice President  
Chief Financial Officer  
(Principal Accounting Officer)

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

By /s/ CONSTANTINE S. MACRICOSTAS

January 8, 2010

Constantine S. Macricostas  
Chairman of the Board  
Chief Executive Officer

By /s/ SEAN T. SMITH

January 8, 2010

Sean T. Smith  
Senior Vice President  
Chief Financial Officer  
(Principal Accounting Officer)

By /s/ WALTER M. FIEDEROWICZ  
Walter M. Fiederowicz  
Director January 8, 2010

By /s/ JOSEPH A. FIORITA, JR.  
Joseph A. Fiorita, Jr.  
Director January 8, 2010

By /s/ GEORGE C. MACRICOSTAS  
George C. Macricostas  
Director January 8, 2010

By /s/ WILLEM D. MARIS  
Willem D. Maris  
Director January 8, 2010

By /s/ MITCHELL G. TYSON  
Mitchell G. Tyson  
Director January 8, 2010

## EXHIBIT 10.1

RagingWire Telecommunications, INC.

### Master Services Agreement #1001.0.1

This Master Services Agreement ("**Agreement**") is entered into effective as of January 11, 2002, ("**Effective Date**") by and between RagingWire Telecommunications, Inc., a Nevada corporation ("**RagingWire**") and Photonics, Inc., a Florida corporation ("**Customer**"). In consideration of the mutual covenants contained in this Agreement, RagingWire and Customer agree as follows:

#### 1. PURPOSE OF AGREEMENT

This Agreement sets forth the terms and conditions by which RagingWire will provide to Customer, and Customer shall accept and pay for, certain Services. Each such Service will be specifically identified and described in a Service Level Agreement ("**SLA**") executed by the Parties and delivered by them to each other, which refer to this Agreement. RagingWire contemplates that Customer may contract for additional Services from time to time, and in each such case a new SLA will be executed, specifically identifying and describing such additional Services and referencing this Agreement. Any equipment sales and/or leases shall be covered in a written agreement separate from this Agreement.

#### 2. DEFINITIONS

The following capitalized terms used in this Agreement have the meanings specified in this Section 2.

2.1 Applicable Rate "**Applicable Rate**" means one and one-half percent (1½%) per month, or the highest rate allowed by applicable law, whichever is lower.

2.2 Confidential Information "**Confidential Information**" is defined in Section 6.1.1 ("Non-Disclosure").

2.3 Customer Area "**Customer Area**" means the portion(s) of the Data Centers made available to Customer for the placement of Customer Equipment and use of the Services.

2.4 Customer Equipment "**Customer Equipment**" means Customer's computer hardware, not including stored data, and other tangible equipment or other tangible personal property placed by Customer in the Customer Area. If RagingWire is undertaking any managed services with respect to the Customer Equipment such equipment shall be identified on RagingWire's standard Customer Equipment List completed by Customer and accepted by RagingWire, as amended in writing from time to time by the Parties.

2.5 Customer Registration Form "**Customer Registration Form**" means a collective reference to the separate documents that contain the name and contact information (e.g., pager, e-mail and telephone numbers) for each of the Representatives authorized by Customer to enter the Data Centers and Customer Area, as delivered by Customer to RagingWire and amended in writing from time to time by Customer. The documents referred to herein include, without limitation, the Customer Information Form, the Use Administrator Form, and the Individual Registration Form.

2.6 Customer Technology "**Customer Technology**" means Customer's proprietary technology and processes, including, but not limited to, Customer's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, inventions, trade secrets and any related Intellectual Property Rights (whether owned by Customer, controlled by or licensed to Customer by a third party) and also including any derivative works, improvements, enhancements or extensions of the foregoing conceived, invented, reduced to practice, expressed in a tangible medium,

2.7 Data Center(s) "**Data Center(s)**" means any of the facilities used by RagingWire to provide the Services to Customer.

2.8 Initial Term "**Initial Term**" is defined in Section 4.2 ("Initial Term").

2.9 Intellectual Property Rights "**Intellectual Property Rights**" mean any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing throughout the universe (a) rights associated with works of authorship, including but not limited to copyrights, moral rights, and mask-works; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patents, design rights, and other industrial property rights; (e) all other intellectual and industrial property rights of every kind and nature and however designated (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; (f) all registrations and applications (whether for patent, copyright or similar right), including all continuations, continuations-in-part, and divisionals thereof; (g) all renewals, extensions, reissues, and re-examinations of such patents now or hereafter in force; and (h) all rights in any of the foregoing.

2.10 Notice of Service Commencement "**Notice of Service Commencement**" means the written notice provided by RagingWire to Customer which sets forth each Service to be provided pursuant to a SLA and the date such Service commenced.

2.11 Parties or Party "**Parties**" means RagingWire and Customer collectively; "**Party**" means either RagingWire or Customer, as the case may be, individually.

2.12 Professional Service(s) "**Professional Service(s)**" means any professional or consulting services provided by RagingWire to Customer, including without limitation any project based or one-time services. Any provision of Professional Services shall be governed by a written Professional Services Agreement separate from this Agreement.

2.13 RagingWire Supplied Equipment "**RagingWire Supplied Equipment**" means the computer hardware, software, computer code and other tangible equipment to be provided by RagingWire to Customer pursuant to a SLA.

2.14 RagingWire Technology. "**RagingWire Technology**" means RagingWire's proprietary technology and processes, including, without limitation, the Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, inventions, trade secrets and any related Intellectual Property Rights (whether owned by RagingWire or licensed to RagingWire from a third party) and also including any derivative works, improvements, enhancements or extensions of the foregoing conceived, invented, reduced to practice, expressed in a tangible medium or developed by RagingWire (independently during the Term).

2.15 Renewal Term "**Renewal Term**" is defined in Section 4.3 ("Renewal Term").

2.16 Representative(s) "**Representative(s)**" means the individuals authorized by Customer in writing to enter the Data Center(s) and the Customer Area including, without limitation, any employees, contractors, or agents of Customer. Each of the Representatives shall be identified in writing on an Individual Registration Form and shall have received a valid password from the Use Administrator to access the Data Center(s).

2.17 Rules and Regulations "**Rules and Regulations**" means RagingWire's general rules and regulations, as amended from time to time by RagingWire, governing access to the Data Center(s) and use of the Services by Customer and Customer's Representatives, including, without limitation, online conduct and the obligations of Customer and Customer's Representatives in the Data Center(s).

2.18 Section "**Section**" means a numbered paragraph section of this Agreement.

2.19 Service(s) "**Service(s)**" means the specific Services provided to Customer by RagingWire as described in each SLA executed by Customer and RagingWire, as amended from time to time; each of which is incorporated herein by reference.

2.20 Service Commencement Date "**Service Commencement Date**" means the date RagingWire begins providing Services to Customer, as indicated in a Notice of Service Commencement delivered by RagingWire to Customer.

2.21 Service Level Goals "**Service Level Goals**" is defined in Section 7.2 ("Service Level Goals").

2.22 Service Outage "**Service Outage**" is defined in the applicable SLA.

2.23 Service Level Agreement (SLA) "**Service Level Agreement**" or "**SLA**" means a separate written Service Level Agreement between Customer and RagingWire that provides a description of each Service to be provided by RagingWire to Customer. A SLA may contain additional information and provisions related to the Services and shall reference this Agreement. All SLA's executed by Customer and RagingWire from time to time are incorporated herein by reference and all Services provided pursuant to all SLA's are subject to the terms and conditions of this Agreement. To the extent any terms herein apply solely to a Service not specified in a SLA, such terms shall not apply to Customer.

2.24 Supplemental Emergency Services "**Supplemental Emergency Services**" is defined in Section 3.2 ("Supplemental Emergency Services").

2.25 Term "**Term**" means the Initial Term plus all Renewal Terms as defined in Section 4 ("Term").

2.26 Use Administrator "**Use Administrator**" is defined in Section 8.3.1 ("Use Administrator").

### 3. DELIVERY OF SERVICES

3.1 Delivery of Services. By executing this Agreement, RagingWire agrees to provide, and Customer agrees to accept and pay for, the Services described in each SLA during the Term. Except as provided in a separate SLA, all Services shall be deemed delivered, and the Parties' respective obligations under this Agreement shall be deemed performed, in Sacramento County, California.

3.2 Supplemental Emergency Services. Customer may request that RagingWire provide to Customer certain limited Services and/or equipment on a "one-time" or emergency basis ("**Supplemental Emergency Services**") where such Services are not included within the scope of the Services described in the SLA's. Supplemental Emergency Services may include, for example, replacing a faulty Customer server with a RagingWire server for a temporary period of time. RagingWire will charge a reasonable fee for Supplemental Emergency Services, and Customer agrees to pay the fees for such Supplemental Emergency Services. Charges for such Supplemental Emergency Services shall be billed separately. RagingWire labor for Supplemental Emergency Services will be billed at the rates listed in Exhibit A, Basic Managed Services. RagingWire has no obligation to provide or to continue to provide any Supplemental Emergency Services. If, however, RagingWire agrees to provide any Supplemental Emergency Services upon request by Customer, such Services shall be provided subject to the availability of resources and personnel. **ALL SUPPLEMENTAL EMERGENCY SERVICES PROVIDED PURSUANT TO THIS SECTION 3.2 ARE PROVIDED ON AN "AS-IS" BASIS AND EXCLUDE WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.**

### 4. TERM

4.1 Term Commencement. The term for provision of and payment for each Service will commence on the Service Commencement Date indicated in the Notice of Service Commencement.

4.2 Initial Term. RagingWire will provide each Service to Customer for an initial term commencing on the Service Commencement Date and ending on the date specified in the SLA ("**Initial Term**"); provided however that in no event shall the Initial Term end on any day other than the last day of a calendar month. In the event a SLA, or a notice termination by Customer, specifies that the Initial Term shall terminate on other than the last day of a calendar month then such Initial Term is hereby extended to the end of the calendar month at issue.

4.3 Renewal Term. Unless one of the Parties provides notice in accordance with Section 12 ("Termination"), RagingWire will automatically continue to provide each Service to Customer for additional periods of time equal to one (1) calendar year from the termination

date of the Initial Term (as such may be adjusted pursuant to Section 4.2 ("Initial Term") or a Renewal Term, as applicable. Each additional period of time for which RagingWire continues to provide Services after the Initial Term is referred to herein as a "**Renewal Term.**"

## 5. FEES AND PAYMENT TERMS

5.1 Fees. Customer agrees to pay all fees due without set off or adjustment and in accordance with the prices for each Service listed in each SLA. Except as provided otherwise in a SLA, the price for each Service listed in each SLA shall not be altered during the Initial Term.

### 5.2 Payment Terms.

5.2.1 Security Deposit, Security Interest. Upon execution of each SLA, Customer agrees to pay to RagingWire, as a security deposit, an amount equal to the monthly recurring charges set forth in the SLA. The security deposit shall serve as a security for Customer's faithful performance of its obligations under this Agreement. If Customer defaults under or materially breaches any provision of this Agreement, RagingWire may use, apply or retain all or any portion of said security deposit for the payment of any amount due to RagingWire, or to reimburse or compensate, RagingWire for any liability, expense, loss or damage which RagingWire may incur by reason of such default or material breach. RagingWire shall not be obligated to keep the security deposit separate from its general accounts. No part of the security deposit shall be considered to be held in trust, to bear interest or to be a prepayment for any monies to be paid by Customer to RagingWire. Within thirty (30) days after the successful conclusion of this Agreement and the fulfillment of all of Customer's obligations hereunder, RagingWire shall return the deposit (less any offsets) to Customer.

5.2.2 Payment on Service Commencement. On the Service Commencement Date for each Service, RagingWire will invoice Customer, and Customer agrees to pay to RagingWire within thirty (30) days of such invoice, an amount equal to the sum of: (i) all non-recurring charges indicated in such SLA and (ii) the recurring charges for the remainder of the calendar month in which the Service Commencement Date occurs, prorated on the basis of a 30-day month.

5.2.3 Recurring Charges. After the month set forth in Section 5.2.2 ("Payment on Service Commencement") payment for monthly recurring charges for each successive full month will be due and payable on the first day of that month, and RagingWire will send Customer a courtesy invoice approximately two (2) weeks prior to the first day of the month for which such recurring Services are to be provided. Payment for recurring charges not received by the tenth day of the month shall be considered late and the provisions of Section 5.3 ("Late Payments") shall apply.

5.2.4 Variable and One-Time Charges. Charges for Services not included in the monthly recurring charges (e.g., burstable Internet bandwidth charges) and charges for one-time Services (e.g., Professional Services, installation work, and Supplemental Emergency Services) shall be included in a separate invoice. Payment for such Services shall be due no later than thirty (30) days after the date of such invoice.

5.3 Late Payments. Any delinquent payments shall accrue interest at the Applicable Rate from the date such payments are due.

5.4 Payment in U.S. dollars. All payments shall be made to RagingWire in U.S. dollars, preferably by means of an automatic electronic funds transfer system.

5.5 Taxes and Other Fees. All fees charged by RagingWire for Services are exclusive of all taxes and similar fees, now in force or enacted in the future, imposed on the transaction and/or the delivery of Services. Customer agrees that it will be responsible for and will pay in full all such taxes and similar fees, except for taxes based on RagingWire's net income. For purposes of this Section 5.5 only, all Services shall be deemed provided at the Data Center where such Services originated.

## 6. CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS

### 6.1 Confidential Information.

6.1.1 Non-Disclosure. RagingWire and Customer acknowledge that each will have access to certain proprietary and/or confidential information of the other Party concerning, without limitation, the other Party's business, plans, customers, financials, technology, products, and other information held in confidence by the other Party, whether in oral, written, graphic or electronic form (collectively, "**Confidential Information**"). As used in this Agreement, Confidential Information will include, but not be limited to: (i) all information in tangible or intangible form that is marked or designated as confidential; (ii) RagingWire Technology; (iii) Customer Technology; and (iv) the terms and conditions of this Agreement and any other agreements between the Parties. RagingWire and Customer each agrees, on behalf of itself, its employees and other persons to whom disclosure of Confidential Information is permitted under this Agreement, that (i) it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party, any of the other Party's Confidential Information.

6.1.2 Non-Confidential Information. Notwithstanding Section 6.1.1 ("Non-Disclosure"), information will not be deemed Confidential Information under this Agreement if such information: (i) is known to the receiving Party prior to receipt from the disclosing Party, as evidenced by the records of the receiving Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party, directly or indirectly, from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes part of the public domain or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party without any breach of this Agreement.

6.1.3 Protection and Preservation. Each Party on behalf of itself, its Representatives, employees, agents, and contractors, agrees that it will receive and hold all Confidential Information in trust and confidence and that it will treat all Confidential Information with the same degree of care as it accords to its own confidential information of like sensitivity, but in no event less than a reasonable level of care. Each Party shall: (i) not sell, license, transfer, publish, disclose, display or otherwise make available the Confidential Information of the other Party; (ii) not reverse assemble or reverse compile in whole or in part any applicable Confidential Information; (iii) acknowledge and take commercially reasonable steps to preserve the other Party's ownership rights in and to such other Party's Confidential Information; (iv) hold in trust and confidence and not use any Confidential Information except as necessary to perform obligations set forth in this Agreement; and (v) similarly bind in writing necessary third parties to the confidentiality obligations of this Section 6.1.3. Notwithstanding the foregoing, each

Party shall have the right to disclose the other party's Confidential Information to its appropriate officers, directors, employees, auditors and attorneys on a "need to know basis". Further, each Party may disclose the other Party's Confidential Information to the extent necessary to comply with an order of an administrative agency or court of competent jurisdiction, or to enforce a Party's rights under this Agreement. As an express condition to the preceding sentence, the Party being required to disclose the information shall (i) take all reasonable steps to prevent such disclosure and (ii) provide prior written notice thereof to the other Party in sufficient time to enable the other Party to seek a protective order or otherwise contest such disclosure. Each Party agrees that it will ensure that its Representatives, employees, agents and contractors will not make use of, disseminate, or in any way disclose any Confidential Information of the other Party to any person, firm or business, except as necessary to perform obligations set forth in this Agreement and then only under a written confidentiality agreement no less restrictive than this Section 6.1 ("Confidential Information"). The obligations of non-disclosure and non use shall apply to Confidential Information for a period of three (3) years from the date of disclosure.

6.1.4 Method of Disclosure. Information disclosed in written form or electronically transmitted shall be considered Confidential Information only if it contains the legend "Confidential." Information disclosed in other-than-written form shall be Confidential Information only if the disclosing Party states that the disclosure is confidential at the time it is made and sends the recipient of the information a written summary, with an appropriate confidentiality legend, of the information so disclosed within thirty (30) days thereafter.

6.1.5 Return of Confidential Information. Upon termination or expiration of this Agreement, or upon written request of the other Party, each Party shall promptly return to the other all documents and other tangible materials representing the other's Confidential Information and all copies thereof, and shall permanently erase or destroy all Confidential Information stored by or for it in electronic, optical, mechanical, or other storage medium, and shall certify, in writing, the completion of the foregoing to the other Party.

## 6.2 Intellectual Property.

6.2.1 Ownership. Except for the rights expressly granted pursuant to Section 6.3.1 ("Grant By RagingWire"), (i) this Agreement does not transfer from RagingWire to Customer any RagingWire Technology and (ii) all right, title and interest (including, without limitation, Intellectual Property Rights) in and to the RagingWire Technology will remain solely with RagingWire. Except for the rights expressly granted pursuant to Section 6.3.2 ("Grant By Customer"), (i) this Agreement does not transfer from Customer to RagingWire any Customer Technology and (ii) all right, title and interest (including, without limitation, Intellectual Property Rights) in and to the Customer Technology will remain solely with Customer.

6.2.2 General Skills and Knowledge. Notwithstanding anything to the contrary in this Agreement, Customer will not at any time prohibit or enjoin RagingWire from using any concepts, skills, knowledge and techniques relating to information technology that is or are acquired during the course of providing the Services, including, without limitation, skills, knowledge and information publicly known or available, generally applicable in the trade (or art), or that could reasonably be acquired in similar work performed for other customers of RagingWire. For example, and without limitation, if, during the Term, RagingWire and/or Customer working with RagingWire jointly develops a computer program or algorithm that may be generally applicable in the art, RagingWire shall have the right to use and/or modify such computer program or algorithm, at no compensation to Customer, to provide Services to [other customers of RagingWire.] The Joint Development shall be jointly owned by RagingWire and Customer and each shall be afforded such rights as are available under applicable law, including federal copyright law.

## 6.3 License Grants.

6.3.1 Grant by RagingWire. RagingWire hereby grants to Customer a non-exclusive, non-transferable, royalty-free license, without the right to grant sub licenses during the Term, to use the RagingWire Technology solely for the purpose of receiving the Services. Customer shall have no right to use the RagingWire Technology for any purpose other than receiving the Services.

6.3.2 Grant by Customer. Customer agrees that if, in the course of providing the Services, it is reasonably necessary for RagingWire to access Customer Equipment and use Customer Technology, RagingWire is hereby granted and shall have a non-exclusive, non-transferable, royalty-free license, without the right to grant sub licenses during the Term, to use the Customer Technology solely for the purpose of providing the Services to Customer. Subject to Section 6.2.2 ("General Skills and Knowledge"), RagingWire shall have no right to use the Customer Technology for any purpose other than providing the Services.

6.4 Restrictions. The RagingWire Technology shall be used by Customer, its Representatives and agents only in a manner consistent with the rights granted in Section 6.3.1 ("Grant By RagingWire"). Customer agrees to use its best efforts to ensure that no portion of the RagingWire Technology is displayed outside the Data Center(s) or distributed in any way to any third party. Customer shall not rent, lease, license, distribute, transfer, reproduce, display, modify, publicly perform or timeshare the RagingWire Technology, or any portion thereof, or use such as a component of or a basis for products or services prepared for sale, license, lease, access or other marketing or distribution. Neither Customer nor any of its Representatives or agents shall prepare any derivative work based on the RagingWire Technology or other materials provided to Customer by RagingWire. Though not authorized to do so, should Customer or any Representative or agent create any derivative works of the RagingWire Technology, Customer, on behalf of itself and its Representative and/or agent, hereby assigns any and all right, title and interest (including, without limitation, Intellectual Property Rights) in such derivative works to RagingWire. Neither Customer nor any of its Representatives or agents shall translate, reverse engineer, decompile or disassemble the RagingWire Technology. Customer shall not allow any third party or unlicensed user or computer system to access or use the RagingWire Technology. Customer agrees not to demonstrate or disclose the results of any testing or bench-marking of the RagingWire Technology, to any third party, without RagingWire's prior written permission.

Customer Technology shall be used by RagingWire, its representatives and agents only in a manner consistent with the rights granted in Section 6.3.2 ("Grant By Customer"). Ragingwire agrees to use its best efforts to ensure that no portion of Customer Technology is displayed outside the Data Center(s) or distributed in any way to any third party. RagingWire shall not rent, lease, license, distribute, transfer, reproduce, display, modify, publicly perform or timeshare the Customer Technology, or any portion thereof, or use such as a component of or a basis for products or services prepared for sale, license, lease, access or other marketing or distribution. Neither RagingWire nor any of its representatives or agents shall prepare any derivative work based on the Customer Technology or other materials provided to RagingWire by Customer. Though not authorized to do so, should RagingWirer or any representative or agent create any derivative works of the Customer Technology, RagingWire, on behalf of itself and its representative and/or agent, hereby assigns any and all right, title and interest (including, without limitation, Intellectual Property Rights) in such derivative works to Customer. Neither RagingWire nor any of its representatives or

agents shall translate, reverse engineer, decompile or disassemble the Customer Technology. RagingWire shall not allow any third party or unlicensed user or computer system to access or use the Customer Technology. RagingWire agrees not to demonstrate or disclose the results of any testing or bench-marking of the Customer Technology, to any third party, without Customer's prior written permission.

## 7. RAGINGWIRE'S WARRANTIES AND SERVICE LEVEL GOALS

7.1 RagingWire Warranties. RagingWire represents and warrants that it has the legal right to enter into this Agreement and perform its obligations hereunder. In the event of a breach of the warranties set forth in this Section 7.1, Customer's sole remedy shall be termination pursuant to Section 12 ("Termination"), except as provided elsewhere in this Agreement.

7.2 Service Level Goals. "**Service Level Goals**" means the service level goals applicable to the Services provided by RagingWire as set forth in the applicable SLA. If Customer experiences any Service performance issues, such as Service Outages, described in an applicable SLA, as a result of RagingWire's failure to provide the Services, the remedies and credits described in the applicable SLA shall apply.

7.2.1 Liquidated Damages. Except as provided elsewhere in this Agreement to the contrary, the Parties acknowledge and agree that because of the unique nature of the Services contemplated by this Agreement, it is difficult or impossible to determine with precision the specific amount of damages that might be incurred by Customer as a result of a failure of RagingWire to meet the Service Level Goals, or the specific amount that should be the responsibility of RagingWire in such circumstances. It is further understood and agreed by the Parties that Customer shall be damaged by such failure of RagingWire to meet the Service Level Goals, that it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, that any credits that become payable under this Section 7.2 ("Service Level Goals") are in the nature of liquidated damages, and not a penalty, and are fair and reasonable under the circumstances, and such payments represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from RagingWire's failure to meet the Service Level Goals.

7.2.2 Sole Remedy and Liability. In recognition of Section 7.2.1 ("Liquidated Damages") and the other provisions hereof, and notwithstanding any other provisions of this Agreement, the Parties acknowledge and agree that, as an essential part of this Agreement, the liquidated damages payable under Section 7.2.1 ("Liquidated Damages") shall be the sole and exclusive measure of damages and remedy for Customer, and the sole and exclusive liability and obligation of RagingWire, arising out of or in any way relating to RagingWire's failure to meet the Service Level Goals or any other failure or default by RagingWire in any way relating to the Services (including any Supplemental Emergency Services) or RagingWire's failure to perform or provide any Services hereunder. The Parties further acknowledge and agree that the pricing and other terms contained in this Agreement reflect and are based upon the intended allocation of risk between the Parties as reflected in this Section 7.2 ("Service Level Goals") and elsewhere in this Agreement, and form an essential part of this Agreement.

7.2.3 Maintenance. RagingWire will conduct scheduled maintenance of the Data Center(s) and Services. In addition, RagingWire may be required to perform emergency maintenance if an urgent, mission-critical, or other serious maintenance situation arises. RagingWire and Customer agree to cooperate to minimize adverse impacts to the other Party during such scheduled and emergency maintenance.

7.2.4 Limitations. THE SERVICE LEVEL GOALS SET FORTH IN THIS SECTION 7.2 ("SERVICE LEVEL GOALS") SHALL APPLY ONLY TO THE SERVICES PROVIDED BY RAGINGWIRE PURSUANT TO A SLA AND DO NOT APPLY TO (1) ANY SUPPLEMENTAL EMERGENCY SERVICES, AND (2) ANY SERVICES THAT EXPRESSLY EXCLUDE THE SERVICE LEVEL GOALS (AS STATED IN THE APPLICABLE SLA). Except as stated ELSEWHERE in this Agreement to the contrary, THIS SECTION 7.2 ("SERVICE LEVEL GOALS") STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE BY RAGINGWIRE TO PROVIDE SERVICES AND/OR THE PROVISION OF DEFECTIVE SERVICES.

7.3 Selection of RagingWire Supplied Equipment; Manufacturer Warranty. CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS SELECTED THE RAGINGWIRE SUPPLIED EQUIPMENT BASED UPON ITS OWN REVIEW AND EVALUATION OF SUCH EQUIPMENT AND CUSTOMER HAS NOT IN ANY WAY RELIED UPON ANY RECOMMENDATIONS OR REPRESENTATIONS WHICH MAY HAVE BEEN MADE BY RAGINGWIRE. RAGINGWIRE DISCLAIMS ANY STATEMENTS MADE BY RAGINGWIRE RELATING THERETO. EXCEPT WITH RESPECT TO ANY EXPRESS WRITTEN WARRANTIES MADE IN THIS AGREEMENT BY RAGINGWIRE FOR SERVICES RELATED TO RAGINGWIRE SUPPLIED EQUIPMENT, CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER'S USE AND POSSESSION OF THE RAGINGWIRE SUPPLIED EQUIPMENT SHALL BE SUBJECT TO AND CONTROLLED BY THE TERMS OF ANY MANUFACTURER'S OR, IF APPROPRIATE, SUPPLIER'S WARRANTY AND INDEMNITY, AND CUSTOMER AGREES TO LOOK SOLELY TO THE MANUFACTURER OR, IF APPROPRIATE, SUPPLIER (AND NOT TO RAGINGWIRE) WITH RESPECT TO ALL MECHANICAL, ELECTRICAL, SERVICE AND OTHER CLAIMS, INCLUDING, WITHOUT LIMITATION, WARRANTY AND INDEMNITY CLAIMS. THE RIGHT TO ENFORCE ALL WARRANTIES AND INDEMNITIES MADE BY SUCH MANUFACTURER OR SUPPLIER IS HEREBY, TO THE EXTENT RAGINGWIRE HAS THE RIGHT, ASSIGNED TO CUSTOMER FOR THE DURATION OF CUSTOMER'S USE OF THE RAGINGWIRE SUPPLIED EQUIPMENT. RAGINGWIRE PROVIDES NO WARRANTY OR INDEMNITY FOR ANY RAGINGWIRE SUPPLIED EQUIPMENT, FOR PERSONAL INJURY, PROPERTY DAMAGES, INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE.

7.4 No Other Warranty. Except for the express warranties set forth in this SECTION 7 or in a sla ("Ragingwire's warranties AND SERVICES LEVEL GOALS"), the Services and the Ragingwire supplied equipment are provided on an "as is" basis, and customer's use of the Services and/or the ragingwire supplied equipment is at CUSTOMER'S own risk. RagingWire does not make, and hereby disclaims, any and all other express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, noninfringement and title, and any warranties arising from a course of dealing, usage or trade practice. RagingWire does not warrant that the Services and/or USE OF the ragingwire supplied equipment will be uninterrupted, error-free, completely secure, OR THAT ALL ERRORS WILL BE CORRECTED.

7.5 Disclaimer of Actions Caused by and/or Under the Control of Third Parties. RagingWire does not and cannot control the flow of data to or from RagingWire's network and other portions of the internet. Such flow depends in large part on the PERFORMANCE of the internet Services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt customer's CONNECTIONS to the internet (or portions thereof). Although RagingWire will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, RagingWire cannot guarantee that such events will not occur. Accordingly, except for the negligence or willful misconduct on the part of RagingWire, RagingWire disclaims any and all liability resulting from or related to such events, AND CUSTOMER ACCEPTS SUCH DISCLAIMER WITHOUT LIABILITY TO RAGINGWIRE.



## 8. CUSTOMER'S REPRESENTATIONS, WARRANTIES

### 8.1 Warranties of Customer.

8.1.1 Warranties. Customer represents and warrants that: (i) it has the legal right and authority to enter into this Agreement and perform its obligations hereunder; (ii) it has the legal right and authority, and will continue to own or maintain the legal right and authority during the Term, to place and use any Customer Equipment as contemplated under this Agreement; (iii) the performance of its obligations and use of the Services (by Customer, its Representatives and customers) will not violate any applicable laws, regulations or the Rules and Regulations or cause a breach of any agreements with any third parties or unreasonably interfere with other RagingWire customers' use of RagingWire Services; (iv) all equipment, materials and other tangible items placed by Customer at the Data Center(s) will be configured and used in compliance with all applicable manufacturer specifications including, without limitation, power outlet, power consumption and clearance requirements; and (v) each Representative will be assigned a unique password, and no password will be shared or otherwise utilized by two (2) or more individuals.

8.1.2 Breach of Warranties. If Customer breaches any of the warranties in Section 8.1.1 ("Warranties"), in addition to any other remedies available at law or in equity, RagingWire will have the right, in its sole discretion, to immediately suspend any or all Services to Customer; provided, however, prior to any exercise of a remedy RagingWire will provide notice as provided in Section 12 ("Termination") and an opportunity to cure to Customer. If such breach is not cured within thirty (30) days, RagingWire shall have the right to terminate services as provided in Section 12. Customer shall be obligated to pay for Services provided due to suspension as a result of the breach.

8.2 Compliance with Laws; Rules and Regulations. Customer agrees that it shall use the Services only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations and the Rules and Regulations, as amended by RagingWire from time to time. RagingWire may change the Rules and Regulations upon reasonable notice to Customer of at least five (5) days, which notice may be provided by posting such new Rules and Regulations at the affected Data Center. Customer acknowledges that Customer has received, read and understood the current version of the Rules and Regulations. The Rules and Regulations contain restrictions regarding online conduct (including prohibitions against unsolicited commercial email) by Customer, its Representatives and its customers. Customer agrees to comply with such restrictions and further agrees that a failure to comply with the same shall, at RagingWire's election, constitute a material breach of this Agreement. Customer further acknowledges that RagingWire exercises no control whatsoever over the content of the information passing through the Customer Equipment and that Customer agrees that it is Customer's sole responsibility to ensure that the information transmitted and received by Customer, its Representatives and its customers comply with all applicable laws and regulations and the Rules and Regulations.

### 8.3 Access and Security.

8.3.1 Use Administrator. Promptly after the Effective Date, Customer shall designate up to two individuals to serve as the use administrator(s) ("**Use Administrator**") for Customer. The Use Administrator shall be responsible for assigning passwords to Representatives, administering security profiles of Representatives, inputting data to the Individual Representative Form, and verifying the identity of Representatives when called upon by RagingWire to do so. The Use Administrator(s) shall also serve as the primary contact between Customer and RagingWire pertaining to the Services.

8.3.2 Representatives. For an individual to be a Representative, the individual must be identified in writing by Customer on an Individual Registration Form prior to first access to the Data Center by such Representative. All Individual Registration Forms must be authenticated by Customer's Use Administrator and a valid password issued in order to become effective. Customer must promptly submit (in writing) and authenticate any changes to the information on an existing Customer Registration Form to RagingWire. RagingWire shall have no liability whatsoever for relying on an outdated Customer Registration Form which has not been properly updated by Customer.

8.3.3 Use of Passwords. Customer acknowledges and agrees that it is solely responsible for maintaining the confidentiality of the passwords distributed to Representatives, and agrees to notify RagingWire if it discovers that the password is lost, stolen, disclosed to an unauthorized third party, or otherwise may have been compromised. Customer shall be entirely responsible for any and all activities which occur under Customer's passwords, whether or not Customer or its Authorized Users are the entity or individuals undertaking such activities.

8.3.4 Data Center Access. Except with the advance written consent of RagingWire, Customer's access to the Data Center(s) shall be limited solely to the Representatives. Representatives shall have access only to the Customer Area and are prohibited from accessing other areas of the Data Center(s) unless accompanied by an authorized RagingWire representative. Customer and its Representatives shall cooperate with and comply with all security and safety measures promulgated by RagingWire from time to time in the Rules and Regulations, including, without limitation, the use of entry and exit logs and agreements, key cards, voice, photo, biometric, or other personal identification recognition devices, and other mechanisms and devices for registering, tracking and limiting access to the Customer Area and the Data Center(s). In the event of an emergency situation, as reasonably determined by RagingWire, involving or potentially involving the Customer Equipment or the RagingWire Supplied Equipment, RagingWire may admit individuals into the Customer Area pursuant to RagingWire's Emergency Admission Procedures.

8.4 License to Use of Space. Customer acknowledges that as a user of space in the Data Center(s), Customer has no right or entitlement to any particular location or amount of square footage (except as otherwise expressly provided in a SLA), but has the right to use the Customer Area solely under a non-exclusive, non-transferable, revocable license, as provided in Sections 8.8 ("Use of Customer Area") and 13.2 ("No Lease; Other Limitations").

8.5 Restrictions on Use of Services. Except as otherwise provided in a written agreement between the Parties, Customer shall not, without the prior written consent of RagingWire (which consent may be granted or withheld in its sole and absolute discretion), resell the Services to any third parties or connect the Customer Equipment directly to anything other than the RagingWire network, equipment and facilities.

8.6 Equipment And Connections. Each piece of Customer Equipment and RagingWire Supplied Equipment installed in the Customer Area must be clearly labeled, in accordance with the standard instructions in RagingWire's Customer Guide, with Customer name (or a code name identified in writing to RagingWire) and individual component identification. Each connection to and from each piece of such equipment shall be clearly labeled with Customer's name (or code name) at the starting and ending point of the connection. Customer

Equipment and RagingWire Supplied Equipment must be configured and run at all times in compliance with the appropriate manufacturer's specifications, including power outlet, power consumption, and clearance requirements. Customer must provide RagingWire with prior written notice any time Customer intends to connect or disconnect any Customer Equipment, RagingWire Supplied Equipment, or other equipment in the Customer Area.

8.7 Relocation of Customer Equipment. If it becomes necessary to relocate the Customer Equipment or RagingWire Supplied Equipment to another Customer Area or Data Center, Customer shall cooperate with RagingWire to facilitate such relocation, whether such relocation is based on the reasonable business needs of RagingWire (including, but not limited to, the needs of other RagingWire customers), the expansion of the space requirements of Customer, or otherwise. RagingWire shall be solely responsible for any costs and expenses incurred by RagingWire in connection with any such relocation and will use commercially reasonable efforts, in cooperation with Customer, to minimize and avoid any interruption of the Services.

8.8 Use of Customer Area. Customer acknowledges that RagingWire has made no representations or warranties about the physical condition of the Customer Area or the Data Center(s), their compliance with laws or their fitness for Customer's intended use. Customer agrees that Customer occupies the Customer Area on an "as-is, where-is" basis under a non-exclusive, non-transferable, revocable license for the Term. Customer agrees that if any law or regulation applicable to the Customer Area or the Data Center(s) requires that alterations or improvements be made to the Customer Area, other customer areas or the Data Center(s), to the extent such requirements result from Customer's use and occupancy of the Customer Area or the Data Center(s), Customer agrees that Customer shall pay for such alterations and improvements. Notwithstanding Customer's payment therefore, the Parties agree that all such alterations and improvements shall immediately become a part of the Data Center and the property of RagingWire or its lessor as applicable.

#### 8.9 Conduct At Data Center.

8.9.1 Conduct. Customer on behalf of itself and its Representatives agrees to adhere to and abide by all security and safety measures set forth in the Rules and Regulations, the Customer Guide or as otherwise established by RagingWire. A copy of the current version of the Rules and Regulations and the Customer Guide shall be made available to Customer upon request. Customer on behalf of itself and its Representatives expressly agrees to not do or participate in any of the following: (i) interfere with, make any unauthorized use of, misuse or abuse any of RagingWire's property or equipment, or that of any other RagingWire customer or third party (ii) harass or disturb any individual, including RagingWire's personnel and representatives of other RagingWire customers; or (iii) any activity that is in violation of the law or aids or assists any criminal activity while on RagingWire's property, or in connection with the Data Center(s) or the Services. **additionally, customer acknowledges that neither it nor any of its representatives shall disturb, in any way, the raised floor of the data center(s).**

8.9.2 Prohibited Items. Customer and Representatives shall keep the Customer Area, and common areas adjacent to it, clean and clear of debris and refuse at all times. Customer shall not, except as otherwise agreed by RagingWire in writing:

(a) Place any Customer Equipment in the Customer Area that is not properly labeled and (if RagingWire is providing managed Services) has not been identified in writing to RagingWire;

(b) Store any paper products or other combustible materials of any kind in the Customer Area (other than equipment manuals and, if applicable, immediately required printing supplies); or

(c) Bring any Prohibited Materials (as defined below) into any Data Center. Such "**Prohibited Materials**" include, without limitation, the following and any similar items: tobacco products and lighters; explosives and weapons; hazardous or flammable materials; spray paint cans; alcohol, illegal drugs and other intoxicants; electromagnetic devices especially those which could interfere with computer and telecommunications equipment; radioactive materials; photographic, video, or magnetic recording equipment of any kind (other than tape back-up equipment); or animals (except those specifically trained and used to provide assistance to the impaired).

(d) Bring food or drinks onto the raised floor of the Data Center(s). These items are permitted only in the designated cafeteria areas.

8.9.3 Prohibited Activities. Customer, on behalf of itself and its Representatives, agrees that it will not: (i) send unsolicited commercial messages or communications in any form to third parties (commonly known as "**spam**"); (ii) engage in any activities or actions that infringe upon or misappropriate the Intellectual Property Rights of any third party, including, without limitation, using third-party copyrighted materials without appropriate permission, using third-party trademarks without appropriate permission or attribution, and using or distributing third-party information protected as a trade secret information in violation of a duty of confidentiality; (iii) engage in any activities or actions that would violate the personal privacy rights of others including, but not limited to, collecting and distributing information about Internet users without their permission, except as permitted by applicable law; (iv) send, post, or host harassing, abusive, libelous, or obscene materials or assist in any similar activities related thereto; (v) intentionally omit, delete, forge, or misrepresent transmission information, including headers, return mailing and Internet protocol addresses; (vi) engage in any activities or actions intended to withhold or cloak Customer or its customer's identity or contact information; (vii) use RagingWire's Services for any illegal purposes, in violation of any applicable laws or regulations or in violation of the rules of any other service providers, websites, chat rooms and the like; (viii) intentionally transmit or otherwise propagate computer viruses or similar destructive computer codes; (ix) disturb or anchor any item to the raised floor of the Data Center(s); (x) climb or scale any cages, ladders, racks or any support structures; (xi) engage in any other activities which may be deemed prohibited, in writing, by RagingWire, in its sole reasonable discretion; or (xii) assist or permit any persons in engaging in any of the activities described above. All of the foregoing are "**Prohibited Activities**". If Customer becomes aware of any Prohibited Activities, Customer will use Customer's best efforts to remedy such Prohibited Activities immediately including, if necessary, limiting or terminating any of its Representative's access to Customer's online facilities.

8.9.4 Cameras. Customer nor any of its Representatives shall utilize, install, or configure any camera or other media device so as to view, record, or transmit any images or information regarding the Data Center(s). In order to maintain each Customer's privacy, all camera installations allowing a Customer to view their own Customer Area will be performed by RagingWire.

8.10 Suspension and Termination of Representative Access to Data Center. RagingWire shall have the right to suspend and/or terminate a Representative's access to the Data Center(s) at any time for any material failure, as determined in RagingWire's sole discretion, by such

Representative to comply with the terms of this Agreement, the Customer Guide and/or the Rules and Regulations. In the event that access is terminated, Customer shall immediately take steps, to RagingWire's reasonable satisfaction, to ensure that Customer's remaining Representatives shall conform their conduct to the terms of this Agreement, the Customer Guide and the Rules and Regulations.

#### 8.11 RagingWire Supplied Equipment.

8.11.1 Delivery and Term. On or prior to the Service Commencement Date, RagingWire shall deliver to Customer, at the designated Customer Area, the RagingWire Supplied Equipment. Customer shall have the right to use the RagingWire Supplied Equipment for the Term unless otherwise specified in the applicable SLA. Customer shall not remove any RagingWire Supplied Equipment from the Customer Area without the prior written consent of RagingWire.

8.11.2 Title. The RagingWire Supplied Equipment shall always remain the personal property of RagingWire. Customer shall have no right or interest in or to the RagingWire Supplied Equipment except as expressly provided in this Agreement and any SLA and shall hold the RagingWire Supplied Equipment subject and subordinate to the rights of RagingWire. Customer agrees to execute UCC financing statements as and when requested by RagingWire and hereby appoints RagingWire as Customer's attorney-in-fact to execute such financing statements on Customer's behalf. Customer will, at Customer's own expense, keep the RagingWire Supplied Equipment free and clear from any liens or encumbrances of any kind (except any caused by RagingWire) and will indemnify and hold RagingWire harmless from and against any loss or expense caused by Customer's failure to do so. Customer shall give RagingWire immediate written notice of any attachment or judicial process affecting the RagingWire Supplied Equipment or RagingWire's ownership thereof. Customer will not remove, alter or destroy any labels on the RagingWire Supplied Equipment stating that it is the property of RagingWire and shall allow the inspection of the RagingWire Supplied Equipment at any time.

Customer Equipment shall always remain the personal property of Customer. RagingWire shall have no right or interest in or to Customer Equipment except as expressly provided in this Agreement and any SLA. RagingWire will, at RagingWire's own expense, keep Customer Equipment free and clear from any liens or encumbrances of any kind (except any caused by Customer) and will indemnify and hold Customer harmless from and against any loss or expense caused by RagingWire's failure to do so. RagingWire shall give Customer immediate written notice of any attachment or judicial proceeding affecting Customer Equipment or Customer's ownership thereof. RagingWire will not remove, alter or destroy any labels on Customer Equipment stating that it is the property of Customer.

8.11.3 Use, Maintenance and Repair. Customer will, at Customer's own expense, keep the RagingWire Supplied Equipment in good repair, appearance and condition, other than normal wear and tear, and, if not included in the Services, shall obtain, pay for and keep in effect throughout the Term a hardware and software maintenance agreement with the manufacturer or other party acceptable to RagingWire. All parts furnished in connection with such repair and maintenance shall be manufacturer authorized parts and shall immediately become components of the RagingWire Supplied Equipment and the property of RagingWire. Customer shall use the RagingWire Supplied Equipment in compliance with the manufacturer's or supplier's suggested guidelines and in accordance with the Rules and Regulations. If Customer fails to maintain the RagingWire Supplied Equipment as described in this Section 8.11.3, RagingWire shall have the option, in its sole and absolute discretion, to: (i) retake possession of the RagingWire Supplied Equipment; and/or (ii) provide such maintenance and charge Customer the associated costs of such maintenance, and Customer agrees to pay any such charges.

8.11.4 Upgrades and Additions. Customer may affix or install any accessory, addition, upgrade, equipment or device to or on the RagingWire Supplied Equipment (other than electronic data) ("**Additions**"), provided that such Additions (i) can be removed without causing damage to the RagingWire Supplied Equipment; (ii) do not reduce the value of the RagingWire Supplied Equipment; (iii) are obtained from or approved in writing by RagingWire prior to affixing or installing such Additions to or on the RagingWire Supplied Equipment, and (iv) are not subject to the interest of any third party. No Additions shall be installed without RagingWire's prior written consent. At the end of the Initial Term, or Renewal Term (if applicable), Customer shall, at RagingWire's sole election, remove any Additions which (i) were not provided by RagingWire, and (ii) are readily removable without causing material damage or impairment of the intended function, use, or value of the RagingWire Supplied Equipment, and Customer shall restore the RagingWire Supplied Equipment to its original configuration. Any Additions, which are not readily removable, shall become the property of RagingWire, lien free and at no cost to RagingWire.

8.12 Scheduled And Emergency Maintenance. RagingWire will conduct routine scheduled maintenance of the Data Center(s) according to the maintenance schedule for the applicable Data Center, as such schedule may be modified from time to time in RagingWire's sole discretion. RagingWire shall make a copy of the then current applicable maintenance schedule available to Customer upon request. In the event that an urgent, mission-critical maintenance situation arises, RagingWire shall have to the right to perform emergency maintenance of the Data Center(s). Any such emergency maintenance, not caused solely by the actions of RagingWire shall not constitute a breach of this Agreement. To the extent circumstances allow in an emergency situation, RagingWire will make reasonable efforts to notify Customer of emergency maintenance about to be performed. During such scheduled and emergency maintenance periods, the Customer Equipment may be unable to transmit and/or receive data, and Customer may be unable to access the Customer Equipment and/or the RagingWire Supplied Equipment. Customer agrees to cooperate with RagingWire during scheduled and emergency maintenance periods. Customer further agrees that RagingWire shall have the right to access the Customer Area for the purpose of performing emergency maintenance.

## 9. INSURANCE

9.1 RagingWire Minimum Insurance Levels. RagingWire agrees to keep in full force and effect during the term of this Agreement: (i) a broad form Commercial General Liability Insurance policy providing for coverage of at least two million dollars (\$2,000,000.00) per occurrence for bodily injury and property damage; and (ii) workers' compensation insurance in an amount not less than that required by applicable law. The Commercial General Liability Insurance policy shall be (i) written on an "occurrence" policy form and not on a "claims made" form; (ii) shall be primary and not contributory with RagingWire's liability insurance; (iii) shall provide for not less than thirty (30) days' advance written notice to RagingWire from the insurer or insurers, if more than one, of any cancellation, nonrenewal, or material change in coverage or available limits of liability; and (iv) shall be issued by an insurance company with a rating of no less than A-V in the current Best's Insurance Guide, or otherwise be acceptable to Customer, and admitted to engage in the business of insurance in the state in which the Services are actually provided (notwithstanding the provisions of Section 3.1 ("Delivery of Services")). RagingWire's Commercial General Liability Insurance coverage may be provided by a combination of primary, excess, and umbrella policies, provided that those policies are absolutely concurrent in all respects regarding the coverage afforded by the policies. The coverage of any excess or umbrella policy must be at

least as broad as the coverage of the primary policy. RagingWire shall ensure, and be solely responsible for ensuring, that its contractors and subcontractors maintain insurance coverage at levels no less than those required by applicable law and customary in the applicable industry.

9.2 Customer Minimum Insurance Levels. Customer agrees to keep in full force and effect during the term of this Agreement: (i) a broad form Commercial General Liability Insurance policy providing for coverage of at least two million dollars (\$2,000,000.00) per occurrence for bodily injury and property damage; and (ii) workers' compensation insurance in an amount not less than that required by applicable law. The Commercial General Liability Insurance policy shall be (i) written on an "occurrence" policy form and not on a "claims made" form; (ii) shall be primary and not contributory with Customer's liability insurance; (iii) shall provide for not less than thirty (30) days' advance written notice to Customer from the insurer or insurers, if more than one, of any cancellation, nonrenewal, or material change in coverage or available limits of liability; and (iv) shall be issued by an insurance company with a rating of no less than A-V in the current Best's Insurance Guide, or otherwise be acceptable to RagingWire, and admitted to engage in the business of insurance in the state in which the Services are actually provided (notwithstanding the provisions of Section 3.1 ("Delivery of Services")). Customer's Commercial General Liability Insurance coverage may be provided by a combination of primary, excess, and umbrella policies, provided that those policies are absolutely concurrent in all respects regarding the coverage afforded by the policies. The coverage of any excess or umbrella policy must be at least as broad as the coverage of the primary policy. Customer shall ensure, and be solely responsible for ensuring, that its Representatives (including contractors and subcontractors) maintain insurance coverage at levels no less than those required by applicable law and customary in the applicable industry.

Customer shall be solely responsible to procure and maintain property insurance coverage for the Customer Equipment, the RagingWire Supplied Equipment and all other items of Customer's property from any and all risks in, on, at or about the Customer Area or the Data Center(s) at which the Services are provided, including without limitation fire, fire protection system failure and earthquake damage.

9.3 Certificates of Insurance. Customer shall (i) deliver to RagingWire certificates of insurance which evidence the minimum levels of insurance set forth in Section 9.2 ("Customer Minimum Insurance Levels"); and (ii) cause its insurance provider(s) to name RagingWire as an additional insured and to notify RagingWire in writing of the effective date of such coverage. Customer shall deliver the certificates of insurance required by this Section 9.3 to RagingWire (i) on or before the first entry of Customer or a Representative onto any Data Center; (ii) again at least thirty (30) days before the expiration date of any applicable policy; and (iii) again on renewal of any applicable policy.

RagingWire shall (i) deliver to Customer certificates of insurance which evidence the minimum levels of insurance set forth in Section 9.1 ("RagingWire Minimum Insurance Levels"); and (ii) cause its insurance provider(s) to name Customer as an additional insured and to notify Customer in writing of the effective date of such coverage. RagingWire shall deliver the certificates of insurance required by this Section 9.3 to Customer (i) on or before the first entry of Customer or a Representative onto any Data Center; (ii) again at least thirty (30) days before the expiration date of any applicable policy; and (iii) again on renewal of any applicable policy.

9.4 Obligations Continue Regardless of Insurance. The insurance requirements set forth in this Section 9 ("Insurance") are independent of Customer's indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to restrict, limit or modify Customer's indemnification and other obligations or to limit Customer's liability under this Agreement.

9.5 Waiver of Subrogation Rights. RagingWire and Customer each agrees to cause the insurance companies issuing their respective insurance policies to waive any subrogation rights that those insurance companies may have against the other Party by way of contract or otherwise. RagingWire and Customer hereby waive any right that either may have against the other on account of any bodily injury or property loss or damage to the extent that such loss or damage is insured hereunder under their respective insurance policies.

## 10. LIMITATIONS OF LIABILITY

10.1 Personal Injury. EACH REPRESENTATIVE AND ANY OTHER PERSON VISITING A DATA CENTER DOES SO AT HIS OR HER OWN RISK. RAGINGWIRE SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY HARM TO SUCH PERSONS RESULTING FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RAGINGWIRE.

10.2 Damage to Customer Equipment. RAGINGWIRE SHALL HAVE NO LIABILITY FOR ANY DAMAGE TO, OR LOSS OF, ANY CUSTOMER EQUIPMENT RESULTING FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RAGINGWIRE. TO THE EXTENT RAGINGWIRE IS LIABLE FOR ANY DAMAGE TO, OR LOSS OF, CUSTOMER EQUIPMENT FOR ANY REASON, SUCH LIABILITY SHALL BE LIMITED SOLELY TO THE THEN-CURRENT MARKET VALUE OF THE CUSTOMER EQUIPMENT, EXCLUDING (i) ANY LOST DATA, (ii) LOST SOFTWARE, AND/OR (iii) LOST FIRMWARE.

10.3 Waiver of Consequential and Incidental Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER OR ANY THIRD PARTY FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, LOSS OF RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

10.4 Hazardous Materials; Assumption of Risk. CUSTOMER ACKNOWLEDGES THAT CERTAIN HAZARDOUS OR TOXIC SUBSTANCES, MATERIALS, OR WASTE (COLLECTIVELY, "**HAZARDOUS MATERIALS**"), INCLUDING BUT NOT LIMITED TO BATTERY ACID, HIGH VOLTAGE ELECTRICITY, AND DIESEL FUEL, MAY BE PRESENT IN OR AROUND THE DATA CENTER(S) AND THAT CUSTOMER AND ITS REPRESENTATIVES MAY BE EXPOSED TO SUCH HAZARDOUS MATERIALS. CUSTOMER IS AWARE OF THE INHERENT RISKS OF INJURY AND PROPERTY DAMAGE INVOLVED IN RAGINGWIRE'S NORMAL OPERATIONS OF THE DATA CENTER(S), INCLUDING, WITHOUT LIMITATION, RISKS DUE TO OCCUPATIONAL OR ENVIRONMENTAL EXPOSURE TO HAZARDOUS MATERIALS KNOWN TO CAUSE CANCER, BIRTH DEFECTS, REPRODUCTIVE HARM, OR OTHER PHYSICAL AILMENTS. CUSTOMER ASSUMES ANY AND ALL KNOWN AND UNKNOWN RISKS OF INJURY AND PROPERTY DAMAGE THAT MAY RESULT FROM EXPOSURE TO HAZARDOUS MATERIALS IN OR AROUND THE DATA CENTER(S), EXCEPT FOR INJURY AND PROPERTY DAMAGE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAGINGWIRE.

10.5 Maximum Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, RAGINGWIRE'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER RELATED TO OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO RAGINGWIRE HEREUNDER FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT WHICH GAVE RISE TO SUCH LIABILITY.

10.6 Loss of Power. RagingWire shall not be liable for any failure or delay in its performance, including a Service Outage, under this Agreement due to the loss of power to any Data Center resulting from the unauthorized activation, or the required periodic testing pursuant to State or local laws or regulations, of any of the Emergency Power Off ("EPO") switches.

10.7 Basis of the Bargain; Failure of Essential Purpose. Customer acknowledges that RagingWire has set its prices and entered into this Agreement in reliance upon the limitations, exclusions, and disclaimers of liability and the disclaimers of warranties and damages set forth in this Agreement, and that such limitations, exclusions and disclaimers form an essential basis of the bargain between Customer and RagingWire. The limitations and exclusions of liability and disclaimers specified in this Agreement shall survive and apply even if the remedies provided herein are found to have failed of their essential purpose.

## 11. INDEMNIFICATION

11.1 Indemnification By RagingWire. RagingWire agrees to indemnify, defend and hold harmless Customer from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "**Losses**") resulting from (i) a breach of its warranties contained in this Agreement or a SLA; (ii) from any claim, suit, action, or proceeding (each, an "**Action**") brought by any third party against Customer or its affiliates alleging: (a) the infringement or misappropriation of any Intellectual Property Rights relating to the delivery or use of the Services (excluding any contributory infringement by the Customer); (b) personal injury and/or property damage to the extent caused by the [gross] negligence or willful misconduct of RagingWire; or (c) any violation of or failure to comply with the Rules and Regulations. Customer may retain its own counsel to assist in the defense of any indemnified Action, at its own expense and provided RagingWire shall retain control over such defense.

11.2 Indemnification By Customer. Customer agrees to indemnify, defend and hold harmless RagingWire, its employees, agents, affiliates and customers (collectively the "**RagingWire Indemnitees**") from and against Losses resulting from (i) a breach of its warranties contained in this Agreement or SLA; (ii) any Action brought by any third party against any of the RagingWire Indemnitees alleging: (a) the infringement or misappropriation of any Intellectual Property Rights relating to the use of the Services; (b) personal injury and/or property damage to the extent caused by the negligence or misconduct of Customer or its Representatives; (c) any violation of or failure to comply with the Rules and Regulations by Customer or its Representatives; (d) any damage or destruction to the Customer Area, the Data Center(s), RagingWire Supplied Equipment or equipment of any third party caused by Customer or its Representatives; (e) damages as a result of the use or occupancy of the Customer Area or Data Center(s) by Customer or its Representatives; (f) infringement or misappropriation of any Intellectual Property Rights of any third party by Customer or its Representatives; (g) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity of any third party by Customer or its Representatives; (h) spamming, or any other offensive, harassing or illegal conduct or violation of the Rules and Regulations by Customer or its Representatives, or The RagingWire Indemnitees may retain their own counsel to assist in the defense of any indemnified Action, at their own expense and provided Customer shall retain control over such defense.

11.3 Additional Indemnities of Customer. RagingWire shall have no liability for, and Customer shall indemnify, defend and hold the RagingWire Indemnitees harmless against, any Losses arising from Actions alleging any infringement of the Intellectual Property Rights of a third party resulting from (i) compliance with Customer's designs, specifications, or instructions; (ii) modification of the Services or the RagingWire Supplied Equipment by Customer or its Representatives; (iii) use of the Services or the RagingWire Supplied Equipment other than as authorized by RagingWire; (iv) use or combination of such the Services or the RagingWire Supplied Equipment with any items not supplied by RagingWire (including, without limitation, any Additions) or Customer's failure to use updated or modified versions of the Services or the RagingWire Supplied Equipment provided by RagingWire; or (v) any information provided by Customer to RagingWire.

11.4 Notice. Each Party's indemnification obligations set forth in Section 11.1 ("Indemnification By RagingWire") and Section 11.2 ("Indemnification By Customer") shall be subject to the following: (i) receiving prompt and sufficient written notice of the existence of any Action so that the indemnifying Party is not prejudiced by a lack of notice; (ii) being able, at its option, to control the defense of such Action; (iii) the indemnified party not settling any such action, claim or suit without the indemnifying party's prior written consent; and (iv) receiving full cooperation of the indemnified Party in the defense of such Action.

11.5 Enjoinder. If Customer's use of the Services or the RagingWire Supplied Equipment under the terms of this Agreement is, or in RagingWire's opinion is likely to be, enjoined or RagingWire desires to limit its exposure to an Action, then RagingWire may, at its sole option and expense, either: (i) procure for Customer the right to continue using such Services or RagingWire Supplied Equipment under the terms of this Agreement; (ii) replace or modify such Services or RagingWire Supplied Equipment so that it is or they are non-infringing and substantially equivalent in function to the enjoined Services or RagingWire Supplied Equipment; or (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of RagingWire, then RagingWire may terminate Customer's rights and RagingWire's obligations under this Agreement with respect to such Services or RagingWire Supplied Equipment and refund to Customer the unearned portion of any fees paid to RagingWire.

11.6 Sole and Exclusive Obligations and Remedies. THE FOREGOING INDEMNITY AND LIMITED REMEDIES ARE THE PARTIES SOLE AND EXCLUSIVE OBLIGATIONS, AND THE PARTIES SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS.

## 12. TERMINATION

12.1 Termination Without Cause. Either Customer or RagingWire may terminate any Services or this Agreement without cause, provided that the terminating Party notifies the other Party in writing at least one hundred and eighty (180) days prior to the end of the Initial Term (or a Renewal Term, if applicable), in which case such Services or the Agreement shall terminate at the end of such term. The termination of any particular Service will not affect Customer's obligation to pay for other Services or any other amounts due from Customer to RagingWire.

## 12.2 Termination For Cause.

12.2.1 For Curable Breach. Subject to Section 7.2 ("Service Level Goals"), either Customer or RagingWire may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five (5) business days after receipt of written notice from RagingWire. Customer may also terminate Services to be provided in the future and the obligation to pay for such future Services in accordance with the terms of the applicable SLA.

12.2.2 Insolvency. Either party may terminate this Agreement effective upon written notice if Customer: (i) becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such involuntary petition or involuntary proceeding is not dismissed within thirty (30) days of filing; or (ii) becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors.

12.2.3 Incurable Breach Either Party may terminate this Agreement effective upon written notice, if the other Party has breached its obligations of confidentiality set forth in Section 6.1 ("Confidential Information").

12.3 No Liability Upon Expiration. Neither Party shall be liable to the other Party for any expiration of any Service in accordance with the terms of the applicable SLA or, excepting Section 12.2 ("Termination for Cause"), this Agreement in accordance with its terms.

12.4 Effect of Termination. Upon the effective date of termination of a Service pursuant to this Agreement:

12.4.1 Termination of Service. RagingWire will immediately cease providing such Service;

12.4.2 Payment. Any and all payment obligations of Customer under this Agreement for such Service provided through the date of termination shall immediately become due and payable, and such payment obligations shall accrue interest, from the date that is thirty (30) days after the final invoice date for such Service, at the Applicable Rate; and

12.4.3 Return of Equipment. Subject to Section 12.5 ("Customer Equipment as Security"), within ten (10) business days of such termination Customer shall, with respect to such Service: (i) remove from the Data Center(s) all associated Customer Equipment (excluding any RagingWire Supplied Equipment) and any other Customer property; (ii) deliver or make available all associated RagingWire Supplied Equipment to an authorized representative of RagingWire; and (iii) return the Customer Area to RagingWire in the same condition as it was on the Service Commencement Date, normal wear and tear excepted. If Customer does not remove the Customer Equipment and other Customer property within such ten (10) business day period, RagingWire will have the option to (i) move any and all such property to secure storage and charge Customer for the cost of such removal and storage, and/or (ii) liquidate the property in any reasonable manner.

12.5 Survival. The following will survive any expiration or termination of this Agreement: Sections 3.2, 5, 6.1, 6.2, 6.4, 7.2, 7.4, 7.5, 8, 9.4, 9.5, 10, 11, 12 and 13.

## 13. MISCELLANEOUS PROVISIONS

13.1 Force Majeure. Excepting any financial obligations arising under this Agreement, neither RagingWire nor Customer shall be liable for any failure or delay in its performance, including Service Outages, under this Agreement due to any cause beyond its reasonable control, including, without limitation, acts of war, acts of God, earthquake, flood, fire, embargo, riot, sabotage, labor dispute, strike or lockout, failure of an energy provider to supply power, governmental act or failure of the Internet (not resulting from the actions or inactions of a Party) (each, a "**Force Majeure Event**"), provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses commercially reasonable efforts to correct such failure or delay in performance. In the event that a Force Majeure event continues for a period of five (5) business days, either party shall have the right to terminate this Agreement and any SLA upon written notice to the other party.

13.2 No Lease; Other Limitations. This Agreement is an agreement for services and is not intended to and shall not constitute a lease of any real property or a transaction for the sale of goods. Customer acknowledges and agrees that: (i) it has been granted only a non-exclusive, non-transferable revocable license to occupy the Customer Area and use the Data Center(s) and any RagingWire Supplied Equipment in accordance with this Agreement; (ii) Customer has not been granted any real property interest in the Customer Area or Data Center(s); (iii) Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances and to the full extent permissible under law waives and releases any rights or remedies with respect thereto; (iv) this Agreement, to the extent it involves the use of space or property leased by RagingWire, shall be subordinate to any lease between RagingWire and its landlord(s); and (v) the expiration or termination of any such lease shall terminate this Agreement as to such space or property subject to Customer retaining any rights or claims it may have against RagingWire arising from the expiration or termination of such lease. Customer hereby waives and releases any claims or rights to make a claim that it may have against the landlord(s) and RagingWire under any lease by RagingWire with respect to any Customer Equipment or other property of Customer located in the premises demised to RagingWire by such landlord(s). Customer will comply with all Rules and Regulations concerning use and occupancy of the Customer Area and other areas in the facilities. Except as expressly provided in Section 13.10 ("Assignment"), Customer shall have no right to transfer its rights of use and occupancy of the Customer Area or Data Center(s) or the RagingWire Supplied Equipment in whole or in part, and any attempted sublicense or transfer of its right of use and occupancy under the licenses granted under this Agreement shall be void.

13.3 Marketing. Customer agrees that during the term of this Agreement RagingWire may publicly refer to Customer, orally and in writing, as a customer of RagingWire upon the prior written consent of Customer. Any other public reference to Customer by RagingWire will require Customer's prior written consent which consent may be for any reason or no reason withheld.

13.4 Government Regulations. Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the United States in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

13.5 Non-Solicitation. During the Term, neither RagingWire nor Customer will, and each Party will ensure that its respective affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by the other Party. Customer further agrees that during the Term, it will not, directly or indirectly, solicit or attempt to solicit for employment any persons contracted by RagingWire to provide any Services to Customer.

13.6 No Third Party Beneficiaries. RagingWire and Customer each agrees that, except as otherwise expressly provided in Section 11 ("Indemnification"), there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either Party or the customers of Customer.

13.7 Governing Law; Choice of Forum. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of California (except that body of law controlling conflicts of law). The United Nations Convention on Contracts For the International Sale of Goods shall not apply to this Agreement. Any litigation resulting from a dispute or claim arising under or relating to this Agreement shall be resolved in a state or federal court in Sacramento, California. The Parties specifically submit to the personal jurisdiction and subject matter jurisdiction of the state and federal courts located in Sacramento, California.

13.8 Informal Dispute Resolution. The Parties shall endeavor to settle by mutual discussions in good faith any disputes or claims arising under or relating to this Agreement or any SLA, including the existence, validity, interpretation, performance, termination or breach of this Agreement or any SLA. Within ten (10) days of a Party's notice of a dispute or claim, at least one management level representative from each Party who is not directly involved in the dispute and with proper authority to resolve this matter shall meet face to face and exhaust all reasonable efforts to resolve the matter.

13.9 Severability; Waiver. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid, illegal or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent or continuing breach or default, and will not act to amend or negate the rights of the waiving Party.

13.10 Assignment. Customer may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets with the prior written consent of RagingWire. Customer shall not otherwise assign its rights or delegate its duties under this Agreement either in whole or in part, and any attempted assignment or delegation shall be void. This agreement will bind and inure to the benefit of each party's permitted assigns.

13.11 Notice. Any notice or communication required or permitted to be given under this Agreement may be delivered by hand, deposited with an overnight courier, sent by registered or certified mail, return receipt requested, postage prepaid, or by facsimile followed by such registered or certified mail, in each case to the address or facsimile number of the receiving Party as listed at the end of this Agreement, or at such other address or facsimile number as may later be furnished in writing by either Party to the other Party. Such notice shall be deemed to have been given upon personal delivery, three (3) days after deposit in the mail or upon electronic acknowledgment of receipt of such facsimile transmission. Notwithstanding the foregoing, notices relating to the Services (including, without limitation, invoices and Notices of Service Commencement) may be delivered from RagingWire to Customer by first class mail, postage prepaid and such notices shall be deemed to have been given three (3) days after deposit in the mail.

13.12 Relationship of Parties. RagingWire and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between RagingWire and Customer. Neither RagingWire nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided in this Agreement.

13.13 Entire Agreement; Counterparts; Originals. This Agreement, including all other agreements referred to in this Agreement and documents incorporated by reference, constitutes the complete and exclusive agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any terms and conditions in any purchase order or other response by Customer which are additional to or different from the terms and conditions of this Agreement are hereby deemed rejected by RagingWire without need of further notice of rejection, and shall not be of any effect or in any way binding upon RagingWire. Such purchase order or other response shall not be deemed to be made a part of this Agreement. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be changed only by a written document signed by authorized representatives of RagingWire and Customer. For purposes of this Agreement, the term "**written**" means anything reduced to a tangible form by a Party, including a printed or handwritten document.

13.14 Interpretation of Conflicting Terms. In the event of a conflict between or among the terms in this Agreement, a SLA, and any other document made a part hereof, the documents shall control in the following order: (i) this Agreement; (ii) the SLA; and then (iii) other documents.

13.15 RagingWire Policies and Procedures. Customer agrees to comply with RagingWire's policies and procedures, including, but not limited to, no tolerance for workplace violence, sexual harassment, or discrimination. The Policies and Procedures are available for Customer's reference.

13.16 Time is of the Essence. Time is of the essence in RagingWire providing the Services to Customer.

13.17 Right to Inspect Customer Area. Upon advance written notice, Customer may inspect the Customer Area during normal business hours of RagingWire.

IN WITNESS WHEREOF, the Parties have read the foregoing and all documents incorporated in this Agreement and agree and accept such terms as of the Effective Date.

**TELECOMMUNICATIONS, INC.:**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**

<b>Basic Managed Services</b>	<b>NRC</b>	<b>MRC</b>

These rates apply for the length of the initial term specified in the Infrastructure SLA.

RagingWire Telecommunications, INC.

Master Services Agreement #1001.0.1

Effective as of January 11, 2002

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## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of February 20, 2003 by and between Photronics, Inc., a Connecticut corporation (the "Company"), having a principal place of business at 1061 East Indiantown Road, Jupiter, Florida 33477 and Sean T. Smith ("Executive") residing at 60 Whitney Ridge Terrace, North Haven, Connecticut, 06473.

### WITNESSETH:

WHEREAS, the Company and Executive desire to enter into this Agreement to assure the Company of the continuing service of Executive and to set forth the terms and conditions of Executive's employment with the Company.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

**1. Term.** The Company agrees to employ Executive and Executive hereby accepts such employment, in accordance with the terms of this Agreement. Subject to Section 5, the term of Executive's employment shall commence on the date hereof and continue for three (3) years thereafter unless this Agreement is earlier terminated as provided herein (the "Term"); provided, however, that unless the Company gives written notice to Executive at least thirty (30) days prior to the end of the Term of this Agreement (as the Term may be extended pursuant to this Section 1), on each anniversary of the date hereof, the Term of this Agreement shall automatically be extended for an additional one (1) year period.

**2. Services.** So long as this Agreement shall continue in effect, Executive shall devote Executive's full business time, energy and ability to the business, affairs and interests of the Company and its subsidiaries and matters related thereto. Executive shall use his best efforts and abilities to promote the Company's interests and shall perform faithfully the services contemplated by this Agreement in accordance with the Company's policies as established by the Board of Directors of the Company.

### **3. Duties and Responsibilities.**

(a) Executive shall serve as the Vice President, Chief Financial Officer of the Company. In the performance of Executive's duties, Executive shall report directly to the CEO and shall have such duties, responsibilities and authority as may from time to time be assigned to the Executive by the CEO.

(b) In addition, Executive agrees to observe and comply with the policies, rules and regulations of the Company. The Company agrees that the duties which may be assigned to Executive shall be the customary duties of the office of Vice President, Chief Financial Officer and shall not be inconsistent with the provisions of the charter documents of the Company or applicable law.

### **4. Compensation.**

(a) Base Compensation. During the Term, the Company agrees to pay Executive a base salary at the rate of \$210,000 per year payable in accordance with the Company's customary payroll practices generally applicable to similarly situated employees as may be in effect from time to time (the "Base Salary"). All payments required hereunder, including the payments required by this Section 4(a), may be allocated by the Company to one or more of its subsidiaries to which Executive renders services but the Company shall remain responsible for all payments hereunder and Executive shall have no obligation to seek payment from such subsidiaries.

(b) Periodic Review. The Compensation Committee or the Board of Directors of the Company shall review Executive's Base Salary and Benefits (as defined below) from time to time in accordance with the normal business practices of the Company. The Company may in its sole discretion increase the Base Salary during the Term. The amount of any increase combined with the previous year's Base Salary shall then constitute Executive's Base Salary for purposes of this Agreement.

(c) Additional Benefits. During the Term, the Executive shall be entitled to participate in the employee benefit plans and arrangements as the Company may establish from time to time in which other employees similarly situated are entitled to participate (which may include, without limitation, bonus plan(s), medical plan, dental plan, disability plan, basic life insurance and business travel accident insurance plan, 401(k) plan, stock option or stock purchase plans or any successor plans thereto (the "Benefits"). The Company shall have the right to terminate or change any such plans or programs at any time.

(d) Automobile Allowance. During the Term of this Agreement, the Company shall provide the Executive with an automobile allowance or company car consistent with the Company's policies and provisions applicable to other similarly situated executives of the Company.

(e) Vacation. During the Term of this Agreement, Executive shall be entitled to four (4) weeks' paid vacation per calendar year, which shall not be transferable to any subsequent year.

**5. Termination.** This Agreement and all rights and obligations hereunder, except the rights and obligations contained in this Section 5, Section 7 (Confidential Information), Section 8 (Non-Competition), Section 9 (Intellectual Property) and Section 10 (Remedies), which shall survive any termination hereunder, shall terminate upon the earliest to occur of any of the following:

(a) Resignation without Good Reason; Retirement. Upon the resignation by Executive without Good Reason (as defined below) following at least thirty (30) days written notice to the Company or retirement from the Company in accordance with the normal retirement policies of the Company, Executive shall be entitled to receive a payment in the amount of the sum of (A) Executive's Base Salary through the date of termination to the extent not theretofore paid, (B) any compensation previously deferred by Executive (together with any accrued interest or earnings thereon), and (C) any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (A), (B) and (C) shall be hereinafter referred to as the "Accrued Obligations"), in a lump sum, subject to statutory deductions and withholdings, in cash within ten (10) business days after the date of termination or any earlier time required by applicable law.

(b) Death or Disability of Executive.

(i) If Executive's employment is terminated by reason of Executive's death or disability, this Agreement shall terminate without further obligations to Executive (or Executive's heirs or legal representatives) under this Agreement, other than for:

(1) Payment of any Accrued Obligations, which shall be paid to Executive or Executive's estate or beneficiary, as applicable, in a lump sum, subject to statutory deductions and withholdings, in cash within ten (10) business days after the date of termination or any earlier time required by applicable law.

(2) Payment to Executive or Executive's estate or beneficiary, as applicable, of any amount accrued pursuant to the terms of any other applicable benefit plan.

(ii) If Executive shall become disabled, Executive's employment may be terminated only by written notice from the Company to Executive.

(iii) For the purposes of this Agreement, "disability" or "disabled" shall mean a mental or physical incapacity which prevents Executive from performing Executive's duties with the Company for a period of three hundred sixty (360) consecutive calendar days, as certified by a physician selected by the Company or its insurers.

(c) Termination for Cause.

(i) The Company may terminate Executive's employment and all of Executive's rights to receive Base Salary, and any Benefits hereunder for Cause.

(ii) Upon such termination for Cause, Executive shall be entitled to receive any Accrued Obligations, which shall be paid to Executive in a lump sum, subject to statutory deductions and withholdings, in cash within ten (10) business days after the date of termination or any earlier time required by applicable law.

(iii) For purposes of this Agreement, the term "Cause" shall be defined as any of the following

(1) Executive's material breach of any of any obligations under this Agreement (other than by reason of physical or mental illness, injury, or condition);

(2) Executive's conviction by, or entry of a plea of "guilty" or "nolo contendere" in a court of competent and final jurisdiction for any felony that impairs his ability to perform his duties to the Company or any crime of moral turpitude;

(3) Executive's commission of an act of fraud upon the Company;

(4) Executive's engaging in willful or reckless misconduct or gross negligence in connection with any property or activity of the Company or its Affiliates;

(5) Executive's repeated and intemperate use of alcohol or illegal drugs after written notice from the Board or Directors;

(6) Executive's material breach of any other material obligation to the Company (other than by reason of physical or mental illness, injury, or condition) that is or could reasonably be expected to result in material harm to the Company;

(7) Executive's becoming insolvent or filing for bankruptcy;

(8) Executive's becoming barred or prohibited by the SEC from holding my position with the Company; or

(9) Executive's violation of any duty of loyalty (i.e., engaging in self-interested transactions, misappropriation of business opportunities that belong to the Company, or a breach of Executive's fiduciary duties to the Company).

(d) Termination Without Cause; Resignation For Good Reason.

(i) Notwithstanding any other provision of this Section 5, (i) the Company, upon thirty (30) days advance notice to Executive, shall have the right to terminate Executive's employment with the Company without Cause at any time, including, without limitation, in connection expiration of the Term and (ii) Executive, upon thirty (30) days advance notice to the Company, shall have the right to resign for Good Reason.

(ii) If Executive is so terminated without Cause or resigns for Good Reason, Executive shall receive from the Company:

(1) Any Accrued Obligations through the date of termination, which shall be paid to Executive in a lump sum, subject to statutory deductions and withholdings, in cash within ten (10) business days after the date of termination or any earlier time required by applicable law.

(2) A payment ("Severance Payment") equal to twelve (12) months of Executive's current Base Salary. The Severance Payment shall be paid by the Company to Executive in equal installments in accordance with the Company's customary payroll practices generally applicable to similarly situated employees as may be in effect from time and shall be subject to statutory deductions and withholdings.

(3) To the extent permitted by applicable law and the terms of the plans, the continuation of medical and dental plan benefits for a period of three hundred sixty (360) days ("Benefit Period"), provided that Executive shall be required to make all required contributions to such plans as Executive did prior to the date of termination date. Subsequent to the Benefit Period, Executive will be eligible to continue medical insurance coverage for any remaining period required under COBRA.

(iii) As used in this Agreement, the term "Good Reason" shall mean (i) (except as set forth in Section 5(e)) the relocation of the Company's principal executive offices to a location outside the contiguous 48 United States without the consent of Executive or (ii) any reduction in salary or benefits contrary to this Agreement, without the consent of Executive.

(iv) As a condition to receiving the payment and benefits extension contemplated by this Section 5(d), Executive agrees to execute and deliver to the Company the Release substantially in the form attached to this Agreement as Exhibit A.

(e) Change of Control.

(i) For purposes of the Agreement, a "change of control" means, and shall be deemed to have taken place, if;

(1) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be a person under Section 14 (d) (2) of the Exchange Act, is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities entitled to vote in the election of directors of the Company;

(2) during any period of two (2) consecutive years (not including any period prior to the execution of this Agreement) individuals who at the beginning of such period constituted the Board and any new directors, whose election by the Board or nomination for election by the Company's shareholders was approved by a vote of at least three-fourths (3/4ths) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board;

(3) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company (a "Transaction"), and shareholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of the Company or other corporation resulting from such Transaction; or

(4) there is a "change in control" of the Company within the meaning of Section 280G of the U.S. Federal internal revenue code of 1986.

(ii) For the purposes of this Section 5(e), the term "Good Reason" shall mean the relocation of the Company's principal executive offices to a location which is more than fifty (50) miles from its then-current location without the consent of Executive.

(iii) In the event Executive is terminated by the Company for any reason (other than for Cause as defined in Section 5(c) thereof, but including a resignation for Good Reason as defined in Section 5(e)(ii)), during the period three (3) months before or two (2) years following a "change in control" of the Company (or any successor), Executive shall be entitled to receive a cash payment equal to eighteen (18) months of Executive's current Base Salary and the benefits described in Section 5(d)(iii) of the Agreement. Upon such "change of control" during the Term, the Term of this Agreement shall automatically be the period equal to the longer of (i) two (2) years from the date of the "change of control" or (ii) the remaining period of the initial three (3) year Term after the "change of control". In no event shall Executive be entitled to receive both the Severance Payment described in Section 5(d) hereof and the "change of control" payment described in this Section 5(e).

(iv) Any payments to be made to Executive in connection with this Section 5(e) shall be made in a lump sum, subject to statutory deductions and withholdings, in cash within ten (10) business days after the date of termination or any earlier time required by applicable law.

(f) Tax Consideration.

(i) In the event that the aggregate of all payments or benefits made or provided to the Executive under this Agreement and under all other plans and programs of the Company (the "Aggregate Payment") is determined to constitute a Parachute Payment, as such term is defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to the Executive an additional amount (the "Gross-Up Amount"), prior to the time any excise tax ("Excise Tax") is imposed by Section 4999 of the Code is payable with respect to such Aggregate Payment, which, after the imposition of all excise, federal, state and local income taxes, enables the Executive to retain a total amount equal to the Aggregate Payment prior to the payment of the Gross-Up Amount. Notwithstanding the foregoing, if it shall be determined that the Executive is entitled to receive the Gross-Up Amount, but the portion of the Aggregate Payment that would be treated as a Parachute Payment does not exceed 125% of the greatest amount that could be paid to the Executive such that the receipt of the Aggregate Payment would not give rise to any Excise Tax (the "Safe Harbor Amount"), then no Gross-Up Amount shall be paid to the Executive and the Aggregate Payment shall be reduced to the Safe Harbor Amount.

(ii) All determinations required to be made under this Section 5(f), including whether the Aggregate Payment constitutes a Parachute Payment, the amount of the Gross-Up Amount to be paid to the Executive, if any, and the determination of the Safe Harbor Amount, if applicable, shall be made in good faith by the by the Company's regular outside auditors (the "Accounting Firm"); provided, however, that such Accounting Firm presents its rationale and supporting calculations to the Executive upon his request and shall in good faith work to resolve any discrepancies raised by accountants or lawyers chosen by the Executive who present reasonable critiques of the determination. If a dispute over the methodology or conclusions of the Accounting Firm cannot be resolved between the parties, an impartial accounting firm shall be consulted to resolve the dispute. All fees and expenses of the Accounting Firm incurred in connection with the retention of the Accounting Firm pursuant to this Section 5(f) shall be borne by the Company. All fees and expenses of the accountants and lawyers chosen by the Executive and, if retained, the additional accounting firm, incurred in connection with the resolution of any disputes pursuant to this Section 5(f) shall be borne by the non-prevailing party.

(iii) As a result of uncertainty in the application of Sections 280G and 4999 of the Code at the time of the determination by the Accounting Firm, the parties hereto acknowledge and agree that it is possible that the Company will have paid a Gross-Up Amount that exceeds the amount that the Company should have paid pursuant to this Section 5(f) (the "Overpayment") or that the Company will have paid a Gross-Up Amount that is less than the amount that the Company should have paid pursuant to this Section 5(f) (the "Underpayment"). In the event the Accounting Firm, in a written opinion delivered to the Company and to the Executive, determines that, based upon the assertion of a deficiency by the Internal Revenue Service against the Executive, which the Accounting Firm believes has a high probability of success, an Overpayment has been made, then any such Overpayment shall, to the extent permitted under applicable law (including Section 402 of the Sarbanes-Oxley Act of 2002), be treated for all purposes as a loan to the Executive which the Executive shall promptly repay to the Company together with interest at the Applicable Federal Rate provided for in Section 7872(f)(2) of the Code; provided, however, the Executive may contest any such determination by the Accounting Firm at his own expense. In the event the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be promptly paid by the

Company to or for the benefit of the Executive together with interest at the Applicable Federal Rate provided for in Section 7872(f)(2) of the Code.

(g) Treatment of Stock Options Upon a Termination.

(i) If this Agreement is terminated pursuant to clause (e) of this Section 5, all stock options or similar rights granted to Executive pursuant to the Company's stock option plans shall immediately vest as of the date of termination and Executive may exercise any such vested stock options for a period of 390 days following such termination, but in no event later than ten (10) years after grant.

(ii) If this Agreement is terminated pursuant to clause (c) of this Section 5, all stock options granted to Executive pursuant to the Company's stock plans shall terminate immediately.

To the extent that the Executive has been granted stock options intended to be incentive stock options under Section 422 of the Internal Revenue Code, such stock options shall cease to be incentive stock options and shall be treated as nonqualified stock options if the options are exercised by the Employee more than three (3) months (one year in case of death or disability as defined in Section 422 of the Internal Revenue Code) following termination of employment.

Except as expressly modified by this clause (g) of this Section 5, all stock options and similar rights granted under the Company's stock plans shall remain subject to all of the terms and conditions of the applicable stock plans and agreements evidencing the grants thereof.

(h) Status of Executive During Exclusivity Period. If this Agreement is terminated pursuant to clauses (a), (b), or (d) of this Section 5, during Executive's Exclusivity Period the Executive shall be deemed and treated as an employee of the Company for the purposes of all payroll, benefits, welfare and stock option plans.

(i) Exclusive Remedy. Executive agrees that the payments other benefits provided and contemplated by this Agreement shall constitute the sole and exclusive obligation of the Company in respect of Executive's employment with and relationship to the Company and that the full payment thereof shall be the sole and exclusive remedy for any termination of Executive's employment. Executive covenants not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment.

**6. Business Expenses.** During the Term of this Agreement, to the extent that such expenditures satisfy the criteria under the Internal Revenue Code or other applicable laws for deductibility by the Company (whether or not fully deductible by the Company) for federal income tax purposes as ordinary and necessary business expenses, the Company shall provide the Executive with reimbursement of reasonable business expenses incurred by the Executive while conducting Company business in a manner consistent with the Company's policies and provisions applicable to the Executives of the Company.

**7. Confidential Information.**

(a) Executive acknowledges that the nature of Executive's employment by the Company is such that Executive shall have access to information of a confidential and/or trade secret nature which has great value to the Company and which constitutes a substantial basis and foundation upon which the business of the Company is based. Such information includes (A) trade secrets, inventions, mask works, ideas, processes, manufacturing, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments or experimental work, designs, and techniques; (B) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; (C) information regarding the skills and compensation of other employees the Company or its affiliates, including but not limited to, their respective business plans or clients (including, without limitation, customer lists and lists of customer sources), or information relating to the products, services, customers, sales or business affairs of the Company or its Affiliates (the "Confidential Information").

(b) Executive shall keep all such Confidential Information in confidence during the Term of this Agreement and at any time thereafter and shall not disclose any of such Confidential Information to any other person, except to the extent such disclosure is (i) necessary to the performance of this Agreement and in furtherance of the Company's best interests, (ii) required by applicable law, (iii) lawfully obtainable from other sources, or (iv) authorized in writing by the Board. Upon termination of Executive's employment with the Company, Executive shall deliver to the Company all documents, records, notebooks, work papers, and all similar material containing any of the foregoing information, whether prepared by Executive, the Company or anyone else.

**8. Non-Competition.** Executive covenants and agrees that commencing on the date hereof and continuing for the entire Term of Executive's employment and for period of twelve (12) months thereafter (the "Exclusivity Period"), Executive shall not, and shall cause each of its affiliates (if applicable) not to:

(a) Acquire any controlling ownership interest in or engage, directly or indirectly, for themselves or as agent, consultant, employee or otherwise, in any business which is competitive with or damaging to the business of the Company or any subsidiary of the Company, whether such business is now owned or hereafter organized or acquired;

(b) Undertake the planning for or organization of, directly or indirectly, alone or in combination with any person or entity any business activity which is competitive with or damaging to the business of the Company or any subsidiary of the Company;

(c) Solicit, attempt to solicit, **or assist others in soliciting or attempting to solicit**, directly or indirectly, any business related to the business of the Company from any customers or prospective customers of the Company; for the purposes of this Section 8, the term "customer" means any entity or person who is or has been a client or customer of the Company during the time which Executive was employed with the Company, and the term "prospective customer" means a person or entity who became known to the Company during the time which Executive was employed with the Company as a result of that person's or entity's interest in obtaining the services or products of the Company; and

(d) Solicit, attempt to solicit, **or assist others in soliciting or attempting to solicit, directly or indirectly, for employment or any similar capacity**, any person who is an employee of, or an independent contractor for, the Company or its direct or indirect subsidiaries, parents or Affiliates or who was such an employee within twelve (12) months prior to the date of such solicitation or attempted solicitation.

(e) Executive acknowledges that in the event of his employment with the Company terminates for any reason, Executive will be able to earn a livelihood without violating the foregoing restrictions.

(f) If any provision or clause, or portion thereof, within this Section 8 shall be held by any court or other tribunal of competent jurisdiction to be illegal, invalid, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion. It is the intention of the parties that, if any court construes any provision or clause within this Section 8, or any portion thereof, to be illegal, void or unenforceable because of the duration of such provision or the geographic area or matter covered thereby, such court shall reduce the duration, area, or matter of such provision, and, in its reduced form, such provision shall then be enforceable and shall be enforced.

## **9. Intellectual Property.**

(a) Executive has no interest (except as disclosed to the Company) in any inventions, designs, improvements, patents, copyrights and discoveries which are useful in or directly or indirectly related to the business of the Company or to any experimental work carried on by the Company. Except as may be limited by applicable law, all inventions, designs, improvements, patents, copyrights and discoveries conceived by Executive during the Term of this Agreement which are useful in or directly or indirectly related to the business of the Company or to any experimental work carried on by the Company, shall be the property of the Company. Executive will promptly and fully disclose to the Company all such inventions, designs, improvements, patents, copyrights and discoveries (whether developed individually or with other persons) and will take all steps necessary and reasonably required to assure the Company's ownership thereof and to assist the Company in protecting or defending the Company's proprietary rights therein.

(b) Executive also agrees to assist the Company in obtaining United States or foreign letters patent and copyright registrations covering inventions assigned hereunder to the Company and that Executive's obligation to assist the Company shall continue beyond the termination of Executive's employment but the Company shall compensate Executive at a reasonable rate for time actually spent by Executive at the Company's request with respect to such assistance. If the Company is unable because of Executive's mental or physical incapacity or for any other reason to secure Executive's signature to apply for or to pursue any application for any United States or foreign letters patent or copyright registrations covering inventions assigned to the Company, then Executive hereby irrevocably designates and appoints the Company, each of its duly authorized officers and agents as Executive's agent and attorney-in-fact to act for and in Executive's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by Executive. Executive will further assist the Company in every way to enforce any copyrights or patents obtained including, without limitation, testifying in any suit or proceeding involving any of the copyrights or patents or executing any documents deemed necessary by the Company, all without further consideration but at the expense of the Company. If Executive is called upon to render such assistance after the termination of Executive's employment, then Executive shall be entitled to a fair and reasonable per diem fee in addition to reimbursement of any expenses incurred at the request of the Company.

**10. Remedies.** The parties hereto agree that the services to be rendered by Executive pursuant to this Agreement, and the rights and privileges granted to the Company pursuant to this Agreement, are of a special, unique, extraordinary and intellectual character, which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in any action at law, and that a breach by Executive of any of the terms of this Agreement will cause the Company great and irreparable injury and damage. Executive hereby expressly agrees that the Company shall be entitled to the remedies of injunction, specific performance and other equitable relief to prevent a breach of this Agreement by Executive. This Section 10 shall not be construed as a waiver of any other rights or remedies which the Company may have for damages or otherwise.

**11. Return of Property.** Executive agrees to return, on or before the termination date, all property belonging to the Company, including but not limited to computers, PDA, telephone and other credit cards, Company business records, Company automobile (if applicable), etc.

**12. Severability.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties to the extent possible. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the extent possible.

**13. Succession.** This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Agreement for all purposes. As used herein, "successor" and "assignee" shall include any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires the stock of the Company or to which the Company assigns this Agreement by operation of law or otherwise. The obligations and duties of Executive hereunder are personal and otherwise not assignable. Executive's obligations and representations under this Agreement will survive the termination of Executive's employment, regardless of the manner of such termination.

**14. Notices.** Any notice or other communication provided for in this Agreement shall be in writing and sent if to the Company to its principal office at:

Photronics, Inc.  
15 Secor Road, PO Box 5226  
Brookfield, Connecticut 06804

Attention: Corporate Secretary

or at such other address as the Company may from time to time in writing designate, and if to Executive at the address set forth above or at such address as Executive may from time to time in writing designate. Each such notice or other communication shall be effective (i) if given by written telecommunication, three (3) days after its transmission to the applicable number so specified in (or pursuant to) this Section 14 and a verification of receipt is received, (ii) if given by certified mail, once verification of receipt is received, or (iii) if given by any other means, when actually delivered to the addressee at such address and verification of receipt is received.

**15. Adequate Consideration.** Executive acknowledges that the cash severance and other benefits to be provided by the Company to Executive are not available under any current plan or policies of the Company. Accordingly, Executive further acknowledges that the payments

and benefits under this Agreement provide adequate consideration for Executive's obligations to the Company contained in Section 7 (Confidential Information), Section 8 (Non-Competition), Section 10 (Remedies) and Exhibit A (Release).

**16. Entire Agreement.** This Agreement contains the entire agreement of the parties relating to the subject matter hereof and supersedes any prior agreements, undertakings, commitments and practices relating to Executive's employment by the Company.

**17. Amendments.** No amendment or modification of the terms of this Agreement shall be valid unless made in writing, duly executed by both parties.

**18. Waiver.** No failure on the part of any party to exercise or delay in exercising any right hereunder shall be deemed a waiver thereof or of any other right, nor shall any single or partial exercise preclude any further or other exercise of such right or any other right.

**19. Governing Law.** This Agreement, and the legal relations between the parties, shall be governed by and construed in accordance with the laws of the State of Connecticut without regard to conflicts of law doctrines and any court action arising out of this Agreement shall be brought in any court of competent jurisdiction within the State of Connecticut.

**20. Attorneys' Fees.** If any litigation shall occur between Executive and the Company which litigation arises out of or as a result of this Agreement or the acts of the parties hereto pursuant to this Agreement, or which seeks an interpretation of this Agreement, the prevailing party shall be entitled to recover all costs and expenses of such litigation, including reasonable attorneys' fees and costs.

**21. Withholding.** All compensation payable hereunder, including salary and other benefits, shall be subject to applicable taxes, withholding and other required, normal or elected employee deductions.

**22. Counterparts.** This Agreement and any amendment hereto may be executed in one or more counterparts. All of such counterparts shall constitute one and the same agreement and shall become effective when a copy signed by each party has been delivered to the other party.

**23. Headings.** Section and other headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

#### THE COMPANY

PHOTRONICS, INC.

By: \_\_\_\_\_  
Name:  
Title:

#### EXECUTIVE

/s/ SEAN T. SMITH  
Name: Sean T. Smith

#### EXHIBIT A

#### RELEASE

1. I signed an Employment Agreement with Photronics, Inc. (the "Company"), dated February 20, 2003 (the "Agreement"), wherein I agreed to the terms applicable to certain terminations of employment with the Company. Pursuant to the terms of the Agreement, I am entitled to certain severance payments and benefits, described in the Agreement, provided that I sign this Release.

2. In consideration of the severance payments described in the Agreement, I, on behalf of myself, my heirs, agents, representatives, predecessors, successors and assigns, hereby irrevocably release, acquit and forever discharge the Company and each of its respective agents, employees, representatives, parents, subsidiaries, divisions, affiliates, officers, directors, shareholders, investors, employees, attorneys, transferors, transferees, predecessors, successors and assigns, jointly and severally (the "Released Parties") of and from any and all debts, suits, claims, actions, causes of action, controversies, demands, rights, damages, losses, expenses, costs, attorneys' fees, compensation, liabilities and obligations whatsoever, suspected or unsuspected, known or unknown, foreseen or unforeseen, arising at any time up to and including the date of this Release, save and except for the parties' obligations and rights under the Agreement. In recognition of the consideration set forth in the Agreement, I hereby release and forever discharge the Released Parties from any and all claims, actions and causes of action, I have or may have as of the date of this Release arising under any state or federal civil rights or human rights law, or under the Federal Age Discrimination in Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder ("ADEA"). By signing this Release, I hereby acknowledge and confirm the following: (a) I was advised in writing by the Company in connection with my termination to consult with an attorney of my choice prior to signing this Agreement, including without limitation, the terms relating to my release of claims arising under ADEA and any other law, rule or regulation referred to above; (b) I was given a period of not fewer than 21 days to consider the terms of this Agreement and to consult with an attorney of my choosing with respect hereto; and (c) I am providing the release and discharge set forth in this paragraph only in exchange for consideration in addition to anything of value to which I was already entitled.

3. The Agreement and this Release may be revoked by me within the 7-day period commencing on the date I sign this Release (the "Revocation Period"). In the event of any such revocation, all obligations of the Company under the Agreement will terminate and be of no further force and effect as of the date of such revocation and both the Company and I will have and be entitled to exercise all rights that would have existed had the Agreement and Release not been entered into. No such revocation will be effective unless it is in writing and signed by me and received by the Company prior to the expiration of the Revocation Period.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date



---

Witness

---

Date

**Exhibit 10.23**

**EXTENSION LETTER AGREEMENT TO EMPLOYMENT AGREEMENT**

CONFIDENTIAL

January 6, 2010

Soo Hong Jeong  
#202 Sam-IK Park Villa  
248 Gumi-Dong  
Bundang, Seongnam, Kyeonggi  
Korea 463-802

RE: Extension of your Employment Agreement

Dear S.H.:

Reference is made to the November 7, 2008 Letter Agreement between yourself and Photronics, Inc, extending your Employment Agreement dated June 9, 2006 (the "Agreement") for an additional period of one year.

This letter will amend your Agreement by renewing your Agreement for an additional period of one (1) year beginning on October 28, 2009 and ending on October 27, 2010. All other terms and conditions of the Agreement will remain the same.

Please indicate your acceptance of the amendment of your Agreement by signing the enclosed copy of this letter and returning it to the undersigned.

Sincerely,

/s/ Constantine Macricostas

---

Constantine Macricostas  
Chairman of the Board and Chief Executive Officer

Agreed to and Accepted

/s/ Soo Hong Jeong

---

Soo Hong Jeong

## AMENDMENT NO. 8

Dated as of October 26, 2009

to

## CREDIT AGREEMENT

Dated as of June 6, 2007

THIS AMENDMENT NO. 8 ("Amendment") is made as of October 26, 2009 by and among Photronics, Inc. (the "Company"), the financial institutions listed on the signature pages hereof and JPMorgan Chase Bank, National Association, as Administrative Agent (in such capacity, the "Administrative Agent") and as Collateral Agent (in such capacity, the "Collateral Agent"), under that certain Credit Agreement dated as of June 6, 2007 by and among the Company, the Lenders and the Administrative Agent (as amended by that certain Amendment No. 1 thereto, dated as of April 25, 2008, that certain Amendment No. 2 thereto, dated as of October 31, 2008, that certain Amendment No. 3 thereto, dated as of December 3, 2008, that certain Amendment No. 4 thereto, dated as of December 12, 2008, that certain Amendment No. 5 thereto, dated as of May 15, 2009, that certain Amendment No. 6 thereto, dated as of June 8, 2009, and that certain Amendment No. 7 thereto, dated as of September 2, 2009, and as may be further amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Credit Agreement.

WHEREAS, the Company has requested that the Lenders, the Administrative Agent and the Collateral Agent agree to certain amendments to the Credit Agreement;

WHEREAS, the Lenders party hereto, the Administrative Agent and the Collateral Agent have agreed to such amendments on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company, the Lenders party hereto, the Administrative Agent and the Collateral Agent have agreed to enter into this Amendment.

1. Amendments to Credit Agreement. Effective as of the date of satisfaction of the conditions precedent set forth in Section 2 below, Section 2.11(c) of the Credit Agreement is amended to add the parenthetical "(provided, however, that in the case of any Net Proceeds received in connection with the Chinese Facility Sale, within three (3) Business Days after approval by the State Administration of Foreign Exchange of the People's Republic of China that the Company may repatriate such Net Proceeds to the United States of America)" immediately after the phrase "within three (3) Business Days after such net Proceeds are received by the Company or any Subsidiary" appearing therein.

2. Conditions of Effectiveness. The effectiveness of this Amendment is subject to the conditions precedent that the Administrative Agent shall have received counterparts of this Amendment duly executed by the Company, the Required Lenders and the Administrative Agent and the Consent and Reaffirmation attached hereto duly executed by the Subsidiary Guarantors.

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3. Representations and Warranties of the Company and Acknowledgements and Confirmations. The Company hereby represents and warrants as follows:

(a) This Amendment and the Credit Agreement, as amended hereby, constitute legal, valid and binding obligations of the Company and are enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) As of the date hereof and giving effect to the terms of this Amendment, (i) no Default shall have occurred and be continuing and (ii) the representations and warranties of the Company set forth in the Credit Agreement, as amended hereby, are true and correct as of the date hereof.

(c) The Company (and by its execution of the Consent and Reaffirmation attached hereto, each Subsidiary Guarantor) hereby acknowledges and confirms that (i) it does not have any grounds, and hereby agrees not to challenge (or to allege or to pursue any matter, cause or claim arising under or with respect to) the effectiveness, genuineness, validity, collectibility or enforceability of the Credit Agreement or any of the other Loan Documents, the Secured Obligations, the Liens securing such Secured Obligations, or any of the terms or conditions of any Loan Document and (ii) it does not possess (and hereby forever waives, remises, releases, discharges and holds harmless the Lenders, the Agents and their respective affiliates, stockholders, directors, officers, employees, attorneys, agents and representatives and each of their respective heirs, executors, administrators, successors and assigns (collectively, the "Indemnified Parties") from and against, and agrees not to allege or pursue) any action, cause of action, suit, debt, claim, counterclaim, cross-claim, demand, defense, offset, opposition, demand and other right of action whatsoever, whether in law, equity or otherwise (which it, all those claiming by, through or under it, or its successors or assigns, have or may have) against the Indemnified Parties, or any of them, by reason of, any matter, cause or thing whatsoever, with respect to events or omissions occurring or arising on or prior to the date hereof and relating to the Credit Agreement or any of the other Loan Documents (including, without limitation, with respect to the payment, performance, validity or enforceability of the Secured Obligations, the Liens securing the Secured Obligations or any or all of the terms or conditions of any Loan Document) or any transaction relating thereto.

4. Reference to and Effect on the Credit Agreement.

(a) Upon the effectiveness hereof, each reference to the Credit Agreement in the Credit Agreement or any other Loan Document shall mean and be a reference to the Credit Agreement as amended hereby.

(b) Except as specifically amended above, the Credit Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Credit Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith.

5. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York.

6. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

7. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Signatures delivered by facsimile or PDF shall have the same force and effect as manual signatures delivered in person.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

PHOTRONICS, INC.,  
as the Company

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 8  
Photronics, Inc.  
Credit Agreement dated as of June 6, 2007

---

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, individually as a Lender, as  
the Swingline Lender, as the Issuing Bank and as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 8  
Photronics, Inc.  
Credit Agreement dated as of June 6, 2007

---

RBS CITIZENS, NATIONAL ASSOCIATION (successor by merger to Citizens Bank of Massachusetts), individually as a Lender and as Co-Syndication Agent

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 8  
Photronics, Inc.  
Credit Agreement dated as of June 6, 2007

---



HSBC BANK USA, NATIONAL ASSOCIATION, individually  
as a Lender and as Co-Syndication Agent

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 8  
Photronics, Inc.  
Credit Agreement dated as of June 6, 2007

---

CITIBANK, N.A., individually as a Lender and as  
Co-Syndication Agent

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 8  
Photronics, Inc.  
Credit Agreement dated as of June 6, 2007

---

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

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 8  
Photronics, Inc.  
Credit Agreement dated as of June 6, 2007

---

UBS LOAN FINANCE LLC,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 8  
Photronics, Inc.  
Credit Agreement dated as of June 6, 2007

---

CONSENT AND REAFFIRMATION

Each of the undersigned hereby acknowledges receipt of a copy of the foregoing Amendment No. 8 to the Credit Agreement dated as of June 6, 2007 (as amended by that certain Amendment No. 1 thereto, dated as of April 25, 2008, that certain Amendment No. 2 thereto, dated as of October 31, 2008, that certain Amendment No. 3 thereto, dated as of December 3, 2008, that certain Amendment No. 4 thereto, dated as of December 12, 2008, that certain Amendment No. 5 thereto, dated as of May 15, 2009, that certain Amendment No. 6 thereto, dated as of June 8, 2009, and that certain Amendment No. 7 thereto, dated as of September 2, 2009, and as may be further amended, supplemented or otherwise modified from time to time, the "Credit Agreement") by and among Photonics, Inc. (the "Company"), the Foreign Subsidiary Borrowers from time to time party thereto (together with the Company, the "Borrowers"), the financial institutions from time to time party thereto (the "Lenders") and JPMorgan Chase Bank, National Association, as Administrative Agent (the "Administrative Agent"), which Amendment No. 8 is dated as of October 26, 2009 (the "Amendment"). Capitalized terms used in this Consent and Reaffirmation and not defined herein shall have the meanings given to them in the Credit Agreement. Without in any way establishing a course of dealing by the Administrative Agent or any Lender, each of the undersigned consents to the Amendment and reaffirms the terms and conditions of the Subsidiary Guaranty and any other Loan Document executed by it and acknowledges and agrees that such agreements and each and every such Loan Document executed by the undersigned in connection with the Credit Agreement remains in full force and effect and is hereby reaffirmed, ratified and confirmed. All references to the Credit Agreement contained in the above-referenced documents shall be a reference to the Credit Agreement as so modified by the Amendment and as the same may from time to time hereafter be amended, modified or restated.

Dated: October 26, 2009

[Signature Page Follows]

---

ALIGN-RITE, INC.

By: \_\_\_\_\_  
Name:  
Title:

ALIGN-RITE INTERNATIONAL, INC.

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS ARIZONA, INC.

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS CALIFORNIA, INC.

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS, INC.

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS ALLEN, INC. (formerly known as Photonics-Toppan Texas, Inc.)

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS I, LLC

By: Photonics Texas, Inc., its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS I, LP

By: Photonics Texas, Inc., its General Partner

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS II, LLC

By: Photonics-Toppan Texas, Inc., its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS II, LP

By: Photonics-Toppan Texas, Inc., its General Partner

By: \_\_\_\_\_  
Name:  
Title:

## AMENDMENT NO. 2

Dated as of October 26, 2009

to

## LOAN AGREEMENT

Dated as of June 8, 2009

THIS AMENDMENT NO. 2 ("Amendment") is made as of October 26, 2009 by and among Photronics, Inc. (the "Borrower"), the financial institutions listed on the signature pages hereof and JPMorgan Chase Bank, National Association, as Administrative Agent (in such capacity, the "Administrative Agent") and as Collateral Agent (in such capacity, the "Collateral Agent"), under that certain Loan Agreement dated as of June 8, 2009 by and among the Borrower, the Lenders and the Administrative Agent (as amended by that certain Amendment No. 1 thereto, dated as of September 2, 2009, and as may be further amended, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Loan Agreement.

WHEREAS, the Borrower has requested that the Lenders, the Administrative Agent and the Collateral Agent agree to certain amendments to the Loan Agreement;

WHEREAS, the Lenders party hereto, the Administrative Agent and the Collateral Agent have agreed to such amendments on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Lenders party hereto, the Administrative Agent and the Collateral Agent have agreed to enter into this Amendment.

1. Amendments to Loan Agreement. Effective as of the date of satisfaction of the conditions precedent set forth in Section 2 below, Section 2.11(c) of the Loan Agreement is amended to add the parenthetical "(provided, however, that in the case of any Net Proceeds received in connection with the Chinese Facility Sale, within three (3) Business Days after approval by SAFE that the Borrower may repatriate such Net Proceeds to the United States of America)" immediately after the phrase "within three (3) Business Days after such net Proceeds are received by the Borrower or any Subsidiary" appearing therein.

2. Conditions of Effectiveness. The effectiveness of this Amendment is subject to the conditions precedent that the Administrative Agent shall have received counterparts of this Amendment duly executed by the Borrower, the Required Lenders and the Administrative Agent and the Consent and Reaffirmation attached hereto duly executed by the Subsidiary Guarantors.

3. Representations and Warranties of the Borrower and Acknowledgements and Confirmations. The Borrower hereby represents and warrants as follows:

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(a) This Amendment and the Loan Agreement, as amended hereby, constitute legal, valid and binding obligations of the Borrower and are enforceable against the Borrower in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) As of the date hereof and giving effect to the terms of this Amendment, (i) no Default shall have occurred and be continuing and (ii) the representations and warranties of the Borrower set forth in the Loan Agreement, as amended hereby, are true and correct as of the date hereof.

(c) The Borrower (and by its execution of the Consent and Reaffirmation attached hereto, each Subsidiary Guarantor) hereby acknowledges and confirms that (i) it does not have any grounds, and hereby agrees not to challenge (or to allege or to pursue any matter, cause or claim arising under or with respect to) the effectiveness, genuineness, validity, collectibility or enforceability of the Loan Agreement or any of the other Loan Documents, the Secured Obligations, the Liens securing such Secured Obligations, or any of the terms or conditions of any Loan Document and (ii) it does not possess (and hereby forever waives, remises, releases, discharges and holds harmless the Lenders, the Agents and their respective affiliates, stockholders, directors, officers, employees, attorneys, agents and representatives and each of their respective heirs, executors, administrators, successors and assigns (collectively, the "Indemnified Parties") from and against, and agrees not to allege or pursue) any action, cause of action, suit, debt, claim, counterclaim, cross-claim, demand, defense, offset, opposition, demand and other right of action whatsoever, whether in law, equity or otherwise (which it, all those claiming by, through or under it, or its successors or assigns, have or may have) against the Indemnified Parties, or any of them, by reason of, any matter, cause or thing whatsoever, with respect to events or omissions occurring or arising on or prior to the date hereof and relating to the Loan Agreement or any of the other Loan Documents (including, without limitation, with respect to the payment, performance, validity or enforceability of the Secured Obligations, the Liens securing the Secured Obligations or any or all of the terms or conditions of any Loan Document) or any transaction relating thereto.

#### 4. Reference to and Effect on the Loan Agreement.

(a) Upon the effectiveness hereof, each reference to the Loan Agreement in the Loan Agreement or any other Loan Document shall mean and be a reference to the Loan Agreement as amended hereby.

(b) Except as specifically amended above, the Loan Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Loan Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith.

#### 5. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York.

6. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.



7. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Signatures delivered by facsimile or PDF shall have the same force and effect as manual signatures delivered in person.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

PHOTRONICS, INC.,  
as the Borrower

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 2  
Photronics, Inc.  
Loan Agreement dated as of June 8, 2009

---

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,  
individually as a Lender and as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,  
as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 2  
Photronics, Inc.  
Loan Agreement dated as of June 8, 2009

---

HSBC BANK USA, NATIONAL ASSOCIATION,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 2  
Photronics, Inc.  
Loan Agreement dated as of June 8, 2009

---

CITIBANK, N.A.,  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 2  
Photronics, Inc.  
Loan Agreement dated as of June 8, 2009

---

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

By: \_\_\_\_\_  
Name:  
Title:

Signature Page to Amendment No. 2  
Photronics, Inc.  
Loan Agreement dated as of June 8, 2009

---

CONSENT AND REAFFIRMATION

Each of the undersigned hereby acknowledges receipt of a copy of the foregoing Amendment No. 2 to the Loan Agreement dated as of June 8, 2009 (as amended by that certain Amendment No. 1 thereto, dated as of September 2, 2009, and as may be further amended, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Photronics, Inc. (the "Borrower"), the financial institutions from time to time party thereto (the "Lenders") and JPMorgan Chase Bank, National Association, as Administrative Agent (the "Administrative Agent"), which Amendment No. 2 is dated as of October 26, 2009 (the "Amendment"). Capitalized terms used in this Consent and Reaffirmation and not defined herein shall have the meanings given to them in the Loan Agreement. Without in any way establishing a course of dealing by the Administrative Agent or any Lender, each of the undersigned consents to the Amendment and reaffirms the terms and conditions of the Subsidiary Guaranty and any other Loan Document executed by it and acknowledges and agrees that such agreements and each and every such Loan Document executed by the undersigned in connection with the Loan Agreement remains in full force and effect and is hereby reaffirmed, ratified and confirmed. All references to the Loan Agreement contained in the above-referenced documents shall be a reference to the Loan Agreement as so modified by the Amendment and as the same may from time to time hereafter be amended, modified or restated.

Dated: October 26, 2009

[Signature Page Follows]

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ALIGN-RITE, INC.

By: \_\_\_\_\_  
Name:  
Title:

ALIGN-RITE INTERNATIONAL, INC.

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS ARIZONA, INC.

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS CALIFORNIA, INC.

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS, INC.

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS ALLEN, INC. (formerly known as Photonics-Toppan Texas, Inc.)

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS I, LLC

By: Photonics Texas, Inc., its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS I, LP

By: Photonics Texas, Inc., its General Partner

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS II, LLC

By: Photonics-Toppan Texas, Inc., its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

PHOTRONICS TEXAS II, LP

By: Photonics-Toppan Texas, Inc., its General Partner

By: \_\_\_\_\_  
Name:  
Title:



## SUBSIDIARIES OF PHOTRONICS, INC.

	State or Jurisdiction of Incorporation or Organization
Align-Rite International, Inc.	(California, USA)
Align-Rite, Inc.	(Florida, USA)
Align-Rite International, Ltd.	(United Kingdom)
Photronics (Wales) Limited	(United Kingdom)
Photronics, B.V.	(Netherlands)
Photronics (Heilbronn) GmbH (in liquidation)	(Germany)
Photronics Arizona, Inc.	(Arizona, USA)
Photronics California, Inc.	(California, USA)
Photronics Texas, Inc.	(Texas, USA)
Photronics Texas I, LLC	(Delaware, USA)
Photronics Texas I, LP (1)	(Texas, USA)
Photronics Texas Allen, Inc.	(Texas, USA)
Photronics Texas II, LLC	(Delaware, USA)
Photronics Texas II, LP (2)	(Texas, USA)
Photronics MZD, GmbH	(Germany)
Photronics Imaging Technologies (Shanghai) Co., Ltd.	(China)
Photronics Semiconductor Mask Corporation (3)	(Taiwan, R.O.C.)
Photronics Switzerland, S.a.r.L	(Switzerland)
Photronics Singapore Pte, Ltd.	(Singapore)
Photronics UK, Ltd.	(United Kingdom)
Photronics France SAS (4)	(France)
PK, Ltd. (5)	(Korea)
PKLT	(Taiwan)

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Note: Entities directly owned by subsidiaries of Photronics, Inc. are indented and listed below their immediate parent. Ownership is 100% unless otherwise indicated.

- (1) 99.0% owned by Photronics Texas I, LLC, and 1.0% owned by Photronics Texas, Inc. (directly and indirectly, in the aggregate, wholly owned by Photronics, Inc.).
  - (2) 99.0% owned by Photronics Texas II, LLC., and 1.0% owned by Photronics Texas Allen, Inc. (directly and indirectly, in the aggregate, wholly owned by Photronics, Inc.).
  - (3) 57.53% owned by Photronics, Inc.
  - (4) 99% owned by Photronics UK, Ltd., and 1% owned by Photronics MZD, GmbH (directly and indirectly, in the aggregate, wholly owned by Photronics, Inc.).
  - (5) 79.98% owned by Photronics, Inc., and 19.71% owned by Photronics Singapore Pte Ltd.
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## **EXHIBIT 23**

### **Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in Registration Statements Nos. 333-160235 and 333-161857 on Form S-3 and Nos. 333-02245, 333-42010, 333-50809, 333-86846, 33-78102 and 333-151763 on Form S-8 of our reports dated January 7, 2010 relating to the consolidated financial statements and financial statement schedule of Photronics, Inc. and subsidiaries and the effectiveness of Photronics, Inc. and subsidiaries internal control over financial reporting appearing in this Annual Report on Form 10-K of Photronics, Inc. and subsidiaries for the year ended November 1, 2009.

**/s/Deloitte & Touche LLP**  
**Stamford, Connecticut**  
**January 7, 2010**

## EXHIBIT 31.1

I, Constantine S. Macricostas, certify that:

1. I have reviewed this Annual Report on Form 10-K of Photronics, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ CONSTANTINE S. MACRICOSTAS

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Constantine S. Macricostas  
Chief Executive Officer  
January 8, 2010

## EXHIBIT 31.2

I, Sean T. Smith, certify that:

1. I have reviewed this Annual Report on Form 10-K of Photronics, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ SEAN T. SMITH

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Sean T. Smith  
Chief Financial Officer  
January 8, 2010

## EXHIBIT 32.1

### Section 1350 Certification of the Chief Executive Officer

I, Constantine S. Macricostas, Chief Executive Officer of Photonics, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

- (1) the Annual Report on Form 10-K of the Company for the year ended November 1, 2009 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ CONSTANTINE S. MACRICOSTAS

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Constantine S. Macricostas  
Chief Executive Officer  
January 8, 2010

**EXHIBIT 32.2**

**Section 1350 Certification of the Chief Financial Officer**

I, Sean T. Smith, Chief Financial Officer of Photonics, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

- (1) the Annual Report on Form 10-K of the Company for the year ended November 1, 2009 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ SEAN T. SMITH

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Sean T. Smith  
Chief Financial Officer  
January 8, 2010