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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## 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 3, 2002

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 of organization)*

**06-0854886**

*(IRS Employer  
Identification Number)*

**1061 East Indiantown Road, Jupiter, Florida 33477**

*(Address of principal executive offices and zip code)*

**(561) 745-1222**

*(Registrant's telephone number, including area code)*

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

*Securities registered pursuant to Section 12(g) of the Act:* **Common Stock, \$0.01 par value per share**

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 periods that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

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

As of December 31, 2002, 32,040,020 shares of the registrant's Common Stock were outstanding. The aggregate market value of registrant's voting stock held by non-affiliates of the registrant as of December 31, 2002 was approximately \$398,163,018.

### DOCUMENTS INCORPORATED BY REFERENCE

Proxy Statement for the 2003  
Annual Meeting of Shareholders  
to be held on March 26, 2003

Incorporated into Part III  
of this Form 10-K

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### Forward Looking Information

Certain statements in this report are considered "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. All forward-looking statements involve risks and uncertainties. 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 and receipt of orders for the Company's products; competitive factors in the industries and geographic markets in which the Company competes; changes in federal, state and foreign 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 foreign currency rate fluctuations; economic and political conditions in international markets; the ability to obtain additional financings; 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 industry; the availability of capital; management changes; damage or destruction to our facilities by natural disasters, labor strikes, political unrest or terrorist activity; the ability to fully utilize its tools; the ability of the Company to receive desired yields, pricing, product mix, and market acceptance of its products; and changes in technology. Any forward looking statements should be considered in light of these factors.

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## PART I

### ITEM 1. BUSINESS

#### General

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 are used as masters to transfer circuit patterns onto semiconductor wafers during the fabrication of integrated circuits and, to a lesser extent, other types of electrical components. The Company operates principally from 10 facilities, four of which are located in the United States, three in Europe and one each in Korea, Singapore and Taiwan.

The Company is a Connecticut corporation, organized in 1969. Its principal executive offices are located at 1061 East Indiantown Road, Jupiter, Florida, 33477, telephone (561) 745-1222.

#### Fiscal 2002 and Recent Developments

On December 12, 2001, the Company sold \$200 million of 4.75% convertible subordinated notes due 2006 in a private offering pursuant to the Securities and Exchange Commission ("SEC") Rule 144A. The notes are convertible into the Company's common stock at a conversion price equal to \$37.00 per share, subject to adjustment in certain circumstances.

In April 2002, the Company acquired an additional 28% of PKL LTD ("PKL"), a leading supplier of photomasks in Korea, for a total ownership of approximately 78% of PKL.

On August 14, 2002 the Company implemented a plan to reduce its operating cost structure by reducing its work force in the United States by approximately 135 employees and by ceasing the manufacture of photomasks at its Milpitas, California facility. Total consolidation and related charges of \$14.5 million were recorded in the fourth quarter of 2002. Of the total charge, \$10.5 million was non-cash for the impairment in carrying value of fixed assets, \$2.5 million of cash charges for severance and benefits for terminated employees that will be paid during their entitlement periods, and \$1.5 million of cash charges for facilities closing costs as well as lease termination costs. Through November 3, 2002, cash charges of approximately \$1.5 million had been expended.

On December 10, 2002, the Company announced its operating results for the fiscal year ended November 3, 2002. During the latter half of 2001 and throughout 2002, the Company experienced a slow-down in new design releases for mature and high-end technology products and increased competitive pricing pressures for photomasks as a result of the rapid downturn in the global semiconductor industry. A more detailed description of the Company's 2002 operating results is contained in Item 7 of Part II of this Form 10-K under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations."

#### Manufacturing Technology

The Company manufactures photomasks, which are used as masters to transfer circuit patterns onto semiconductor wafers. The Company's photomasks are manufactured in accordance with circuit designs provided on a confidential basis by its customers. The typical manufacturing process for one of the Company's photomasks 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 dissolved 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 membranes) are applied and, after final inspection the photomask is shipped to the customer.

The Company currently supports customers across the full spectrum of integrated circuit production technologies by manufacturing photomasks using electron beam or laser-based technologies and, to a significantly lesser degree, 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

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used with the most advanced processing techniques to produce VLSI (very large-scale integrated circuit) devices. The Company currently owns a number of electron beam and laser-based systems. The production of photomasks by the optical method is less expensive and precise. The optical method traditionally is to manufacture less complex and lower priced photomasks.

The first several layers of photomasks sometimes are required to be delivered by the Company within 24 hours from the time it receives a customer's design data. The ability to manufacture high quality photomasks within short time periods is dependent upon efficient manufacturing methods, high yield and high equipment reliability. The Company believes that it meets these requirements by making significant investments in manufacturing and data processing systems and 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 required. Each photomask is inspected several times during the manufacturing process to ensure compliance with customer specifications. The Company continues to make a substantial investment in equipment to inspect and repair photomasks and 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.

## Sales and Marketing

The market for photomasks primarily consists of domestic and foreign semiconductor manufacturers and designers, including a limited number of manufacturers who have the capability to manufacture photomasks. 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 purchase 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 foreign facilities. The Company considers its presence in international markets important to attracting new customers, providing global solutions to its existing customers and serving customers that utilize manufacturing foundries outside of the United States, principally in Asia. For a statement of the amount of net sales, operating income or loss, and identifiable assets attributable to each of the Company's geographic areas of operations, see Note 15 of Notes to the Consolidated Financial Statements.

## Customers

The Company primarily sells its products to leading semiconductor manufacturers. The Company's largest customers during fiscal 2002 include the following:

Agere Systems Inc.	National Semiconductor Corporation
ASM Lithography	Philips Semiconductor Manuf., Inc.
Atmel Corp.	Samsung
Conexant	Seagate Technology
Hynix Semiconductor	Silicon Integrated System Corp.
Intersil Corporation	System Silicon Mfg.
LSI Logic Corp.	ST Microelectronics, Inc.
Macronix International Co., Ltd.	Texas Instruments Incorporated
Maxim Integrated Products	United Microelectronics Corp
Motorola Inc.	Winbond Electronics Corp.

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The Company, during fiscal year 2002, sold its products and services to approximately 600 customers. During fiscal 2002, one customer accounted for 10.4% of the Company's net sales. The Company's five largest customers, in the aggregate, accounted for 36% of net sales in fiscal 2002. 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.

## Research and Development

The Company conducts ongoing research and development activities in four of its advanced manufacturing locations covering all major regions represented by the Company's customer base, intended to maintain the Company's leadership in technology and manufacturing efficiency. Since fiscal 1994, the Company has increased its investment in research and development activities and current efforts include deep ultraviolet, phase-shift and optical proximity correction photomasks for advanced semiconductor manufacturing as well as masks for emerging technologies including masks for Fiber Bragg Gratings, MEMS, nanotechnology and next generation lithography ("NGL") "post-optical" lithographic technologies. Phase-shift and optical proximity correction photomasks use advanced materials, designs and lithography techniques for enhanced resolution of images on a semiconductor wafer. NGL technologies use new masking technologies for wafer patterning and are designed for the manufacture of integrated circuits with critical dimensions below that believed possible with currently utilized optical exposure methods. Examples of NGL technologies include Extreme Ultraviolet Lithography and Electron Projection Lithography. NGL manufacturing technologies are still under development and have not yet been adopted as standard production methods. Since March 1999, NGL research and development has been conducted in connection with our research and development venture with IBM, which was completed in fiscal 2002. The Company has incurred expenses of \$30.2 million, \$24.9 million and \$20.7 million for research and development in fiscal 2002, 2001 and 2000, respectively. The Company believes that it owns or controls valuable proprietary information necessary for its business as presently conducted. Recently, the Company has either applied for or been granted patents pertaining to its business segment. 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.

## Materials and Supplies

Raw materials used by the Company generally include high precision quartz plates, which are used as photomask blanks, primarily obtained from Japanese suppliers (including Hoya Corporation ["Hoya"] and Ulcoat Corporation ["Ulcoat"]); pellicles, which are protective transparent cellulose membranes; 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 a limited number of suppliers and the Company is not dependent on any one supplier for its raw materials. The Company believes that its utilization of a select group of strategic suppliers enables it to access the most advanced material technologically available.

The Company has established purchasing arrangements with Hoya and Ulcoat, and it is expected that the Company will purchase substantially all of its photomask blanks from these suppliers as long as their price, quality, delivery and service are competitive.

The Company relies on a select 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 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 sometimes are required to be shipped within 24 hours of receiving a customer's design. Because of the short period between order and shipment dates (typically from one day to two weeks) for a significant amount of the Company's sales, the dollar amount of current backlog is not considered to be a reliable indication of future sales volume.

## Competition

The photomask industry is highly competitive and most of the Company's customers utilize more than one photomask supplier. The Company's ability to compete depends primarily upon the 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. Certain competitors have considerably greater financial and other resources than the Company. 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.

Since the mid-1980s there has been a decrease in the number of independent manufacturers as a result of independents being acquired or discontinuing operations. The Company believes that entry into the market by a new independent manufacturer would require a major investment of capital, a significant period of time to establish a commercially viable operation and additional time to attain meaningful market share and achieve profitability.

The Company estimates that for the type of photomasks it manufactures in North America, the size of the total market (captive and merchant) is approximately \$500 million, and the rest of the world approximately \$2.0 billion. The Company believes that it has a larger share of the United States market than any other photomask manufacturer and, as a result of its acquisition of PKL, that it is one of the largest photomask manufacturers in the world. Competitors in the United States include DuPont Photomasks, Inc., and in international markets, Compugraphics, Dai Nippon Printing, DuPont Photomasks, Hoya, Taiwan Mask Corp. and Toppan. In addition, some of the Company's customers, such as IBM, NEC, TSMC and Samsung, possess their own captive facilities for manufacturing photomasks. Also, certain semiconductor manufacturers market their photomask manufacturing services to outside customers as well as to their internal organization.

## Employees

As of December 31, 2002 the Company and its majority-owned subsidiaries employed approximately 1,580 persons on a full-time basis. The Company believes it offers competitive compensation and other benefits and that its employee relations are good. Except for employees in the United Kingdom, none of its employees are represented by a union.

## ITEM 2. DESCRIPTION OF PROPERTY

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

Location	Facility Size (Sq. Ft.)	Type of Interest
Allen, TX	60,000	Owned
Austin, TX	50,000	Owned
Brookfield, CT (Building #1)	19,600	Owned
Brookfield, CT (Building #2)	20,000	Owned
Phoenix, AZ	30,000	Leased
Bridgend, South Wales	27,115	Leased
Cheonan, Korea	23,000	Leased
Dresden, Germany	10,000	Leased
Hsinchu, Taiwan	73,000	Leased
Manchester, England	42,000	Owned
Singapore	20,000	Leased

As part of the Company's 2002 consolidation and workforce reduction plan, the Company closed its manufacturing facility in Milpitas, California. The Company believes that its existing manufacturing facilities are adequate for further plant expansions at existing sites.

## 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 2002.

## 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 National Market System ("NMS") under the symbol PLAB. The table below shows the range of high and low sale prices per share for each quarter for fiscal year 2002 and 2001, as reported on the NASDAQ NMS.

	High	Low
<b>Fiscal Year Ended November 3, 2002:</b>		
Quarter Ended January 31, 2002	\$35.13	\$24.41
Quarter Ended April 30, 2002	35.57	28.82
Quarter Ended July 31, 2002	35.40	10.01

**Fiscal Year Ended October 31, 2001:**

Quarter Ended January 31, 2001	\$37.00	\$15.25
Quarter Ended April 30, 2001	38.44	20.19
Quarter Ended July 31, 2001	31.50	17.50
Quarter Ended October 31, 2001	25.60	16.85

On December 31, 2002, the closing sale price for the Common Stock as reported by NASDAQ was \$13.70. Based on information available to the Company, the Company believes it has approximately 9,000 beneficial 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.

On December 12, 2001, the Company sold \$200 million of 4.75% convertible subordinated notes due 2006 in a private offering pursuant to the Securities and Exchange Commission ("SEC") Rule 144A. The notes are convertible into the Company's common stock at a conversion price equal to \$37.00 per share, subject to adjustment in certain circumstances.

**ITEM 6. SELECTED FINANCIAL DATA**

The following selected financial data is derived from the Company's consolidated financial statements. The consolidated financial statements for all periods presented gives retroactive effect to the 2000 merger of Photronics, Inc. and Align-Rite International Inc., which was accounted for as a pooling of interests. The data should be read in conjunction with the consolidated financial statements and notes thereto and other financial information included elsewhere in this Form 10-K.

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	Years Ended				
	November 3, 2002	October 31 2001 (a)	October 31, 2000 (b)	October 31, 1999	November 1, 1998 (c)
	(in thousands, except per share amounts)				
<b>OPERATING DATA:</b>					
Net Sales	\$386,871	\$377,969	\$331,212	\$277,395	\$269,293
Cost and Expenses:					
Cost of sales	276,451	254,272	220,650	193,467	170,864
Selling, general and administrative	57,973	53,758	46,059	40,119	36,235
Research and development	30,154	24,858	20,731	16,611	13,402
Consolidation, restructuring and related charges	14,500 (d)	38,100 (e)	23,000 (f)	-	3,800
Operating income	7,793	6,981	20,772	27,198	44,992
Other income (expense):					
Interest expense	(17,801)	(11,966)	(11,091)	(7,731)	(6,703)
Interest and other income, net	4,510	2,664	5,783	3,335	4,581
Income (loss) before income tax provision (benefit) and minority interest	(5,498)	(2,321)	15,464	22,802	42,870
Income tax provision (benefit)	(7,019)	(3,000)	4,700	8,354	16,288
Minority interest in income of consolidated subsidiaries	(6,378)	(4,705)	(588)	-	-
Net income (loss)	\$(4,857)	\$(4,026)	\$10,176	\$14,448	\$26,582
Earnings (loss) per share:					
Basic	\$ (0.16)(d)	\$ (0.13)(e)	\$ 0.35 (f)	\$ 0.52	\$ 0.95
Diluted	\$ (0.16)(d)	\$ (0.13)(e)	\$ 0.34 (f)	\$ 0.51	\$ 0.92
Weighted average number of common shares outstanding:					
Basic	31,278	29,919	28,761	27,800	28,123
Diluted	31,278	29,919	29,831	28,105	33,093
	<b>November 3, 2002</b>	<b>October 31, 2001 (a)</b>	<b>October 31, 2000 (b)</b>	<b>October 31, 1999</b>	<b>November 1, 1998 (c)</b>

Working capital	\$142,028	\$ 48,732	\$ 78,393	\$ 33,484	\$ 43,506
Property, plant and equipment	443,860	402,776	395,281	348,144	282,964
Total Assets	832,442	660,698	604,976	502,309	421,702
Long-term debt	296,785	188,021	202,797	148,281	104,261
Shareholders' equity	339,115	287,161	293,980	254,130	238,196

- Effective August 27, 2001, the Company acquired a majority of the total share capital of PKL Ltd. ("PKL"), a photomask manufacturer based in Korea. The operating results of PKL have been included in the consolidated statement of operations since the effective date of the acquisition.
- Effective June 20, 2000, the Company acquired a majority of the total share capital of Precision Semiconductor Mask Corporation ("PSMC"), a photomask manufacturer based in Taiwan. The operating results of PSMC have been included in the consolidated statement of operations since the effective date of the acquisition.
- In December 31, 1997, the Company acquired the internal photomask manufacturing operations of Motorola, Inc. in Mesa, Arizona. The consolidated statement of operations data includes the results of the former final phase of Motorola photomask operations since the effective date of the acquisition.
- Includes consolidation charge of \$14.5 million (\$10 million after tax or \$0.32 per diluted share) in connection with the closure of the Company's Milpitas, California manufacturing facility and workforce reduction.
- Includes consolidation charges of \$38.1 million (\$26.1 million after tax, or \$0.87 per diluted share) in connection with the final phase of the Company's merger with Align-Rite International, Inc. and subsequent consolidation of facilities in California, Florida and Germany.
- Includes restructuring and related charges incurred in connection with the closure of the Company's Sunnyvale, California and Neuchatel, Switzerland facilities and merger related expenses totaling \$14.8 million (after tax) or \$0.52 per diluted share.

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

### Results of Operations for the Years Ended November 3, 2002, October 31, 2001 and 2000

#### Overview

In 2001, the Company completed the acquisition of a majority equity interest (approximately 51%) in PKL LTD. ("PKL"), a leading Korean photomask supplier, for \$56 million. In April 2002, the Company acquired an additional 28% of PKL in exchange for 1,212,218 shares of Photronics common stock. The acquisition was accounted for as a purchase and accordingly goodwill in the aggregate of \$69.4 million was recorded. The operating results of PKL have been included in the Company's consolidated statements of operations since August 27, 2001.

In June 2000, the Company completed its merger with Align-Rite International, Inc. ("Align-Rite"), an independent publicly traded manufacturer of photomasks in the United States and Europe. Under the terms of the Merger Agreement, each of the 4,731,232 shares of common stock of Align-Rite issued and outstanding as of June 7, 2000 was converted into 0.85 shares of common stock of Photronics. Cash was paid in lieu of the issuance of any fractional shares of Photronics that would otherwise have been issued. Any stock options to acquire Align-Rite common stock that had not been exercised as of June 7, 2000 became fully vested options to acquire Photronics common stock in accordance with the merger agreement. The Company recorded expenses of \$5.5 million in fiscal 2000 relating to costs incurred in connection with this transaction. Such costs consisted primarily of fees for investment bankers, attorneys, accountants, financial printing and other related charges. The transaction was accounted for as a pooling-of-interests. Accordingly, the consolidated financial statements, the accompanying notes and this management's discussion and analysis have been restated to reflect the Company's financial position, results of operations and cash flows as if Align-Rite was a consolidated, wholly-owned subsidiary of the Company for all periods presented.

In June 2000, the Company acquired a majority share of Precision Semiconductor Mask Corporation ("PSMC"), a photomask manufacturer based in Taiwan, for approximately \$63.4 million in cash. The acquisition was accounted for as a purchase. The operating results of PSMC have been included in the Company's consolidated statement of operations from June 20, 2000.

The Company's growth in recent years has also been affected by the rapid technological changes taking place in the semiconductor industry resulting in a greater mix of high-end photomask requirements for more complex integrated circuit designs. During the latter half of 2001 and continuing throughout 2002, the Company was impacted by the downturn in the semiconductor industry which resulted in decreased demand and increased competitive pricing pressures. The Company cannot predict the duration of such cyclical industry conditions or their impact on its future operating results.

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. To meet the technological demands of its customers and position the Company for future growth, the Company continues to make substantial investments in high-end manufacturing capability both at existing and new facilities. The Company's capital expenditures for new facilities and equipment to support its customers' requirements for high technology products was approximately \$219.0 million for the three fiscal years ended November 3, 2002, resulting in significant increases in operating expenses. Based on the anticipated technological changes in the industry, the Company expects these trends to continue.

The Company believes that changes in photomask demand reflect changes in semiconductor design activity and are only indirectly affected by changes in semiconductor sales volumes. In the past, increased design activity has been stimulated by both the rapid development of new generation semiconductor designs and the proliferation of application-specific integrated circuits. While design activity has continued, the Company was impacted by the reductions in design releases for production during the latter half of 2002 as a result of the depressed semiconductor industry.

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#### Results of Operations

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

	Year Ended		
	November 3, 2002	October 31, 2001	October 31, 2000
Net sales	100.0%	100.0%	100.0%
Cost of sales	71.5	67.3	66.6

Gross Margin	28.5	32.7	33.4
Selling, general and administrative expenses	15.0	14.2	13.9
Research and development expenses	7.8	6.6	6.3
Consolidation, restructuring and related charges	3.7	10.1	6.9
	<hr/>	<hr/>	<hr/>
Operating income	2.0%	1.8%	6.3%
	<hr/>	<hr/>	<hr/>

## Net Sales

Net sales for the fiscal year ended November 3, 2002 increased 2.4% to \$386.9 million, compared to \$378.0 million in 2001 primarily as a result of increased growth in Asia as a result of inclusion of our majority-held subsidiary in Korea for 2002. The increase, however, was partially mitigated by decreased sales in North America, as certain North American customers moved their semiconductor manufacturing to foundries located in Asia. By geographic area, net sales in Asia increased \$58.1 million or 82%, while North America sales decreased \$47.6 million or 19.7% and European sales decreased \$1.6 million or 2.5%. Other factors contributing to the increased sales in 2002 include an improved sales mix of high-end technology products, which have design rules of 0.18 micron and below and increased unit volume associated with increased design releases. The increased design releases were primarily experienced during the first six months of the year. Sales decreased during the second half of 2002 due to a slow-down in new design releases for mature and high-end technology products, due in part, to the decreased end user demand, both consumer and corporate, for devices utilizing semiconductors and continued increased competitive pricing pressures for mature products. As a result of the continued downturn in the global semiconductor industry, the Company continues to see weaknesses in selling prices for mature technologies but has benefited from its investments in high-end manufacturing capability and increased global presence.

Net sales for the fiscal year ended October 31, 2001 increased 14.1% to \$378.0 million, compared to \$331.2 million in 2000, as a result of the Company's continued global expansion, and an improved sales mix of high-end technology products, which have higher average selling prices and increased unit volume associated with increased design releases. During the latter half of 2001 the Company began to experience a slow-down in new design releases due to competitive pricing pressures resulting from the global semiconductor industry downturn.

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## Gross Margin

Gross margin for the year ended November 3, 2002 decreased to 28.5% from 32.7% for the year ended October 31, 2001. The decrease was primarily associated with the decreased utilization of the Company's expanded fixed equipment cost base, primarily in North America, due in part, to decreased demand and competitive pricing pressures for mature product technologies. The decreased demand for all technologies was primarily experienced during the latter half of 2002 as fewer designs were released into production. Additionally, improved gross margins at the Company's subsidiary in Korea were offset by lower margins from the Company's other locations.

Gross margin for the year ended October 31, 2001 decreased to 32.7% from 33.4% for the year ended October 31, 2000. The decrease in 2001 was primarily attributable to the rapid downturn in the semiconductor industry which affected the Company during the last six months of 2001 during which the Company experienced decreased demand and reduced utilization of the Company's fixed equipment base. The decreased demand was somewhat mitigated by efficiencies realized from the Company's 2001 consolidation plan.

## Selling, General and Administrative Expenses

Selling, general and administrative expenses for the year ended November 3, 2002 increased 7.8% to \$58.0 million, or 15.0% of net sales, from \$53.8 million, or 14.2% of net sales for the year ended October 31, 2001. The increase in 2002 was primarily attributable to the inclusion of the Company's Korean subsidiary for all of 2002 and increased information technology costs associated with the Company's global infrastructure. These increases were partially mitigated by reduced amortization costs of \$1.1 million in 2002 as a result of the Company's adoption of Statement of Financial Accounting Standards ("SFAS") No. 142, "Goodwill and Other Intangible Assets" (see Note 5 to the consolidated financial statements).

Selling, general and administrative expenses for the year ended November 3, 2001 increased 16.7% to \$53.8 million, or 14.2% of net sales, from \$46.1 million, or 13.9% of net sales for the year ended October 31, 2000. The increase in 2001 was primarily attributable to the Company's continued global expansion, both domestically and internationally, including additional costs associated with the Company's Asian investments, and increased technology costs associated with expanding the Company's global network.

## Research and Development

Research and development expenses for the year ended November 3, 2002, increased 21.3% to \$30.2 million, or 7.8% of net sales, from \$24.9 million, or 6.6% of net sales in 2001. The increase in fiscal year 2002 is attributable to the continuing global development efforts of high-end process technologies for advanced, sub wavelength reticle solutions in Next Generation Lithography ("NGL") applications, which include the Company's five installed nano-technology line tool sets.

Research and development expenses for the year ended October 31, 2001, increased 19.9% to \$24.9 million, or 6.6% of net sales, from \$20.7 million, or 6.3% of net sales in 2000. This increase is attributable to the continued development efforts of high-end process technologies, primarily in the United States and Taiwan, and in NGL applications.

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## Consolidation, Restructuring and Related Charges

In August 2002, the Company implemented a plan to reduce its operating cost structure by reducing its work force in the United States by approximately 135 employees and by ceasing the manufacture of photomasks at its Milpitas, California facility. Total consolidation and related charges of \$14.5 million were recorded in the fourth quarter of 2002. Of the total charge, \$10.5 million was non-cash for the impairment in carrying value of fixed assets, \$2.5 million of cash charges for severance and benefits for terminated employees that will be paid during their entitlement periods and \$1.5 million of cash charges for facilities closing costs as well as lease termination costs. Through November 3, 2002, cash charges of approximately \$1.5 million had been expended.

In April 2001, the Company initiated a plan to consolidate its global photomask manufacturing network in order to increase capacity utilization and manufacturing efficiencies, as well as accelerate the expansion of its world-class technology development. Total associated consolidation and related charges associated with this plan of \$38.1 million were recorded in the second quarter of 2001. Of the total charge, \$30.6 million related to this plan and \$7.5 million related to the impairment of intangible assets that no longer had any future economic benefit to the Company. A significant component of this associated plan included the closing of the former Align-Rite manufacturing facilities in Burbank, California, Palm Bay, Florida and Heilbronn, Germany which resulted in a reduction in work force of approximately 120 employees. The consolidation charge of \$30.6 million includes: \$4.0 million of cash charges for severance benefits for terminated employees paid during their entitlement periods; \$4.5 million for facilities closings and lease termination costs expended over the projected lease terms; and non-cash charges of \$22.1 million that approximate the carrying value of fixed assets that are primarily associated with this plan based upon their expected disposition. Through November 3, 2002 cash charges of approximately \$6.1 million had been expended.

During March 2000, the Company implemented a plan to restructure its mature products group in order to increase capacity utilization, manufacturing efficiencies and customer service activities worldwide. Total charges associated with this restructuring plan of \$17.5 million were recorded in the second quarter of 2000. Of the total charge, \$9.1 million related to restructuring and \$8.4 million related to the impairment of associated intangible assets because such assets no longer had future economic benefit to the Company. The significant components of the restructuring plan included the closing of the Company's Sunnyvale, California and Neuchatel, Switzerland manufacturing facilities and the consolidation and regionalization of sales and customer service functions. As part of the plan, the Company reduced its work force by approximately 125 employees. The restructuring charge of \$9.1 million includes \$1.5 million of cash charges for severance benefits paid to terminated employees which was disbursed over their entitlement periods and \$2.3 million for facilities closings and lease termination costs expended through the first quarter of 2001. Additionally, non-cash charges of \$5.3 million approximated the carrying value primarily of fixed assets associated with the manufacturing restructuring based upon their expected disposition.

#### **Other Income and Expense**

Interest expense for the year ended November 3, 2002 increased by \$5.8 million to \$17.8 million as compared to \$12.0 million for 2001. The increase is primarily the result of the \$200 million, 4.75% convertible debt offering completed December of 2001 and borrowings associated with the Company's acquisition of PKL. Investment and other income, net, during 2002 increased by \$1.8 million to \$4.5 million as compared to \$2.7 million in 2001 primarily due to a \$2.6 million gain on the repurchase of \$41.2 million of the Company's 6% convertible notes.

Interest expense for the year ended October 31, 2001 increased by \$0.9 million to \$12.0 million as compared to \$11.1 million for 2000, primarily the result of additional borrowings associated with the Company's investments in Asia. Investment and other income, net, during 2001 decreased by \$3.1 million to \$2.7 million as compared to \$5.8 million in 2000 primarily because there were no investment sales in 2001.

#### **Income Taxes**

For the year ended November 3, 2002 the Company recorded a tax benefit of \$7.0 million or 59.1% of the pretax loss. The Company's effective tax rate, or benefit of 59.1%, was higher than the U.S. statutory rate as a result of a significant shift in pretax income during 2002 to tax jurisdictions where the Company has tax holidays.

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For the year ended October 31, 2001 the Company recorded a tax benefit of \$3.0 million or 42.7% of the pretax loss. The loss was a result of the Company's consolidation plan charge, which primarily impacted U.S. tax rates. The 2000 effective tax rate of 31.6% was lower than in 2001 primarily due to income in countries with government granted tax exemptions and higher tax credits.

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

The minority interest charge of \$6.4 million in fiscal 2002, \$4.7 million in fiscal 2001, and \$0.6 million in fiscal 2000, reflects the portion of income attributable to the minority shareholders of the Company's non-wholly owned subsidiaries.

#### **Net Income (Loss) and Earnings (Loss) Per Share**

For the year ended November 3, 2002 the Company incurred a net loss of \$4.9 million or (\$0.16) per diluted share compared to a net loss of \$4.0 million or (\$0.13) per diluted share in fiscal 2001. Net income, excluding the effects of consolidation, restructuring and related charges for 2002 and 2001, decreased to \$5.1 million or \$0.16 per diluted share in fiscal 2002 compared to \$22.1 million or \$0.74 per diluted share in fiscal 2001.

For the year ended October 31, 2001 the Company incurred a net loss of \$4.0 million or (\$0.13) per diluted share compared to net income of \$10.2 million or \$0.34 per diluted share in fiscal 2000. Net income, excluding the effects of consolidation, restructuring and related charges for 2001 and 2000, decreased to \$22.1 million or \$0.74 per diluted share in fiscal 2001 compared to \$25.0 million or \$0.86 per diluted share in fiscal 2000.

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

On December 12, 2001, the Company sold \$200 million of 4.75% Convertible Subordinated Notes due 2006 ("Notes") in a private offering pursuant to SEC Rule 144A. The Notes are convertible into the Company's common stock at a conversion price of \$37.00 per share. Total net proceeds from the issuance amounted to approximately \$193.2 million. Concurrent with the issuance of Notes, on December 12, 2001 the Company repaid all of its outstanding borrowings under the previous revolving credit agreement which amounted to \$57.7 million and terminated the agreement.

In July 2002, the Company entered into a credit agreement with a group of financial institutions that provides for a three-year, revolving credit facility with an aggregate commitment of \$100 million. The credit facility allows for borrowings in various currencies and includes a provision which allows for an increase in aggregate commitments up to \$125.0 million upon the conversion of at least 50% of the Company's \$103 million, 6% convertible subordinated notes due June 1, 2004. The interest rate is based on the terms of the agreement and will vary based on currencies borrowed and market conditions. The effective interest rate for fiscal 2002 was approximately 7%. Currently the facility fee is 0.4% of total aggregate commitments. As of November 3, 2002, \$89.4 million was available under the facility. The Company is subject to compliance with and maintenance of certain financial and other covenants, and matters set forth in the agreement, including a limitation on cash dividends available for payment to shareholders. The credit facility is secured by a pledge of the Company's stock in certain of its subsidiaries.

The Company's working capital at November 3, 2002 was \$142.0 million compared with \$48.7 million at October 31, 2001. The increase in working capital is primarily associated with the net proceeds of the Company's \$200.0 million of convertible debt issued in December of 2001. Cash, cash equivalents and short-term investments at November 3, 2002 were \$129.1 million compared to \$34.7 million at October 31, 2001. Cash provided by operating activities for the year



ended November 3, 2002 increased to \$136.4 million from \$113.6 million for the year ended October 31, 2001, due in part, to increased accounts payable and accrued liabilities of \$35.3 million and increased depreciation and amortization of \$10.2 million.

Cash used by investing activities of \$140.7 million consisted principally of capital equipment purchases of \$126.5 million and increased investments of \$15.0 million. The Company expects capital expenditures for 2003 to be approximately \$60.0 million. Capital expenditures for 2003 will be used primarily to continue to expand the Company's high-end technical capability.

Cash provided by financing activities of \$82.7 million consisted principally of proceeds from the issuance of convertible debt of \$193.2 million offset by the repayment of the Company's previous line of credit agreement of \$57.7

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million and other net debt repayments of \$57.5 million. In the fourth quarter of fiscal 2002, the Company repurchased \$41.2 million of its 6% convertible notes for total consideration of \$38.2 million, resulting in a net gain of \$2.6 million. The Company believes that its currently available resources, together with its capacity for growth and its accessibility to debt and equity financing sources, are sufficient to satisfy its cash requirements for the foreseeable future.

The Company's commitments represent investments in additional manufacturing capacity as well as advanced equipment for the production of high-end, more complex photomasks. At November 3, 2002, the Company had commitments outstanding for capital expenditures of approximately \$30.0 million. Additional commitments for capital requirements are expected to be incurred during fiscal 2003.

### Cash Requirements

The Company's cash requirements over the next twelve months are primarily to fund operations, including spending on research and development, capital expenditures, debt service and acquisitions. The Company expects that cash on hand and cash generated from operations will be sufficient to meet cash requirements for the next twelve months. 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 cash available from operations.

### Contractual Cash Obligations and Other Commercial Commitments and Contingencies

The following tables quantify our future contractual obligations and commercial commitments as of November 3, 2002 (in millions):

#### Contractual Obligations

	Payments Due in Fiscal				
	Total	2003	2004 & 2005	2006 & 2007	Thereafter
Long-term debt	\$307.4	\$10.6	\$93.9	\$202.9	\$ -
Operating leases	9.0	2.5	3.6	2.0	0.9
Unconditional purchase obligations	44.6	35.1	7.6	1.9	-
<b>Total</b>	<b>\$361.0</b>	<b>\$48.2</b>	<b>\$105.1</b>	<b>\$206.8</b>	<b>\$0.9</b>

#### Other Commercial Commitments

	Amounts Expiring in Fiscal				
	Total	2003	2004 & 2005	2006 & 2007	Thereafter
Standby letters of credit	\$5.8	\$5.8	-	-	-
<b>Total</b>	<b>\$5.8</b>	<b>\$5.8</b>	<b>-</b>	<b>-</b>	<b>-</b>

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### Certain Transactions

In June of 2002 the Company purchased land from an entity controlled by the Chairman of the Board of the Company for approximately \$530 thousand. The Company also purchased in June 2002 one of its manufacturing facilities (the "purchased manufacturing facility") and the land in June 2002 from an entity controlled by the Chairman's two sons, one of whom is a Board member, for approximately \$2.2 million. The purchase price for both transactions was equal to the appraised value as established by independent appraisals obtained by the Company.

The Company previously leased the purchased manufacturing facility from the entity controlled by the Chairman's two sons prior to the purchase by the Company. The rent paid to this entity for the fiscal year ended November 3, 2002 was approximately \$45 thousand.

The Chairman of the Board of the Company is also the Chairman of the Board and majority shareholder of a company who is a supplier of secure managed information technology services. Another director of the Company is also an employee and a director of this company. In 2002 the Company entered into a fifty-two month service contract with this company to provide services to all of the Company's worldwide facilities at a cost of approximately \$3.2 million per year. In 2002 the Company incurred expenses of \$2.4 million related to services provided by this company of which \$302 thousand was owed to this company at November 3, 2002.

The Company believes that the terms of the transactions described above with affiliated persons were negotiated at arm's-length and were no less favorable to the Company than the Company could have obtained from non-affiliated parties.

## **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 our accounting policies that affect our financial condition and results of operations.

### *Consolidation*

The accompanying consolidated financial statements include the accounts of Photronics, Inc. and its majority-owned subsidiaries ("Photronics" or the "Company"), in which the Company exercises control. 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.

### *Derivative Investments and Hedging Activities*

The Company records derivatives on the consolidated balance sheet as assets or liabilities, measured at fair value. 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 (loss), 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, the derivative must be highly effective in achieving offsetting changes in fair value or cash flows of the hedged items during the term of the hedge.

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### *Property, Plant and Equipment*

Property, plant and equipment is 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 eliminated from the accounts, and any resulting gain or loss is reflected in income.

For financial reporting purposes, depreciation and amortization are computed on 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 of the lease or the estimated useful life of the improvement, whichever is less.

### *Income Taxes*

The provision for income taxes is computed on the basis of consolidated financial statement income. Deferred income taxes reflect the tax effects of differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for income tax purposes.

### *Foreign Currency Translation*

The Company's foreign 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 as other comprehensive income (loss) as a separate component of shareholders' equity. The effects of changes in exchange rates on foreign currency transactions are included in income.

### *Revenue Recognition*

The Company recognizes revenue upon shipment of goods to customers.

## **Effect of New Accounting Standards**

In June 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 143, "Accounting for Asset Retirement Obligations." SFAS No. 143 supersedes previous guidance for financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. This statement applies to legal obligations associated with the retirement of long-lived assets that result from the acquisition, construction, development and (or) the normal operation of a long-lived asset.

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." SFAS No. 144 supersedes previous guidance for financial accounting and reporting for the impairment or disposal of long-lived assets.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities". SFAS No. 146 nullifies Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)."

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure, an Amendment of FASB Statement No. 123." SFAS No. 148 requires quarterly disclosure of pro forma stock compensation information.

In November 2002, the FASB issued FASB Interpretation ("FIN") No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." FIN No. 45 clarifies and expands existing disclosure requirements for guarantees, including loan guarantees.

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In January 2003, the FASB issued FIN No. 46, "Consolidation of Variable Interest Entities - an Interpretation of Accounting Research Bulletin No. 51." FIN No. 46 clarifies rules for consolidation of special purpose entities.

SFAS No.'s 143, 144, 146 and 148 and FIN No's. 45 and 46 become effective for the Company's financial statements for fiscal year 2003. The Company does not expect the adoption of these statements to have a material impact on its consolidated financial position, consolidated results of operations or consolidated cash flows.

## 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. Gains or losses resulting from changes in the values of those derivatives are reported in the statement of operations or as accumulated other comprehensive income (loss), 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, the derivative must be highly effective in achieving offsetting changes in fair value or cash flows of the hedged items during the term 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 rates. The Company documents its risk management strategy and hedge effectiveness at the inception of and during the term of each hedge.

In the fourth quarter of fiscal year 2002, the Company entered into an interest rate swap contract (the "Contract"), which effectively converted \$100 million of its 4.75% fixed rate convertible notes to a variable rate. Contract payments are made on a LIBOR based variable rate (2.98% at November 3, 2002) and are received at the 4.75% fixed rate.

The Contract is used to adjust the proportion of total debt that is subject to fixed interest rates. This contract is considered to be a hedge against changes in the fair value of the Company's fixed rate debt obligation. Accordingly, the Contract has been reflected at fair value in the Company's consolidated balance sheet and the related portion of fixed rate debt being hedged is reflected at an amount equal to the sum of its carrying value plus an adjustment representing the change in fair value of the debt obligation attributable to the interest rate risk being hedged. In addition, changes during any accounting period in the fair value of the Contract, as well as offsetting changes in the adjusted carrying value of the related portion of fixed rate debt being hedged, are recognized as adjustments to interest expense in the Company's consolidated statement of operations. The net effect of this accounting on the Company's operations results is that the interest expense portion of fixed rate debt being hedged is generally recorded based on variable rates.

### 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, gross margins and retained earnings. The Company attempts to minimize currency exposure risk by producing its products in the same country or region in which the products are sold and thereby generating revenues and incurring expenses in the same currency and by managing its working capital; there can be no assurance that this approach will be successful, especially in the event of a significant and sudden decline in the value of any of the international currencies of the Company's worldwide operations. The Company does not engage in purchasing forward exchange contracts for speculative purposes. The Company does not believe that a 10% change in exchange rates would have a material effect on its consolidated financial position, results of operations or cash flows.

### Interest Rate Risk

The majority of the Company's borrowings are in the form of its convertible subordinated notes, which bear interest rates ranging from 4.75% to 6.0% and certain foreign secured and unsecured notes payable which bear interest between approximately 2.5% and 6.7%. In addition, the interest rate swap contract discussed above subjects the Company to market risk as interest rates fluctuate and impact the interest payments due on the \$100 million notional amount of the contract. The Company does not expect changes in interest rates to have a material effect on income or cash flows in 2003 although there can be no assurances that interest rates will not change significantly. The Company does not believe that a 10% change in interest rates would have a material effect on its consolidated financial position, results of operations or cash flows.

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## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

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<a href="#">Consolidated Balance Sheets at November 3, 2002 and October 31, 2001</a>	20
<a href="#">Consolidated Statements of Operations for the years ended November 3, 2002, October 31, 2001 and 2000</a>	21
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## INDEPENDENT AUDITORS' REPORT

Board of Directors and Shareholders  
Photronics, Inc.  
Jupiter, Florida

We have audited the accompanying consolidated balance sheets of Photronics, Inc. and subsidiaries as of November 3, 2002 and October 31, 2001, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the three fiscal years ended November 3, 2002, October 31, 2001 and 2000. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Photronics, Inc. and subsidiaries as of November 3, 2002 and October 31, 2001, and the results of their operations and their cash flows for each of the three fiscal years ended November 3, 2002, October 31, 2001 and 2000 in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 5 to the consolidated financial statements, the Company changed its method of accounting for goodwill and other intangible assets to conform to Statement of Financial Accounting Standards No. 142 "Goodwill and Other Intangible Assets."

**DELOITTE & TOUCHE LLP**  
**Hartford, Connecticut**  
**December 6, 2002**

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**PHOTRONICS, INC. AND SUBSIDIARIES**

**Consolidated Balance Sheets**  
*(in thousands, except per share amounts)*

	<b>November 3, 2002</b>	<b>October 31, 2001</b>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$113,944	\$ 34,684
Short-term investments	15,148	-
Accounts receivable (less allowance for doubtful accounts of \$1,840 in 2002 and \$1,000 in 2001)	62,545	70,704
Inventories	19,948	21,492
Deferred income taxes	21,270	20,052
Other current assets	16,205	4,464
	<hr/>	<hr/>
Total current assets	249,060	151,396
Property, plant and equipment, net	443,860	402,776
Intangible assets, net	121,217	93,199
Other assets	18,305	13,327
	<hr/>	<hr/>
	\$832,442	\$660,698
	<hr/>	<hr/>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt and notes payable	\$ 10,649	\$ 33,918
Accounts payable	57,401	37,142
Accrued liabilities	38,982	31,604
	<hr/>	<hr/>
Total current liabilities	107,032	102,664
Long-term debt	296,785	188,021
Deferred income taxes	33,330	25,350
Other liabilities	11,209	12,492
	<hr/>	<hr/>
Total liabilities	448,356	328,527
Minority interest	44,971	45,010
	<hr/>	<hr/>
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, 32,033 shares issued and outstanding at November 3, 2002 and 30,276 shares issued and outstanding at October 31, 2001	320	303
Additional paid-in capital	195,588	146,378
Retained earnings	158,363	163,220
Accumulated other comprehensive loss	(14,999)	(22,740)
Deferred compensation on restricted stock	(157)	-
	<hr/>	<hr/>
Total shareholders' equity	339,115	287,161
	<hr/>	<hr/>
	\$832,442	\$660,698
	<hr/>	<hr/>

See accompanying notes to consolidated financial statements.

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**PHOTRONICS, INC. AND SUBSIDIARIES**

**Consolidated Statements of Operations**

(in thousands, except per share amounts)

	Years Ended		
	November 3, 2002	October 31, 2001	October 31, 2000
Net sales	\$386,871	\$377,969	\$331,212
Cost and expenses:			
Cost of sales	276,451	254,272	220,650
Selling, general and administrative	57,973	53,758	46,059
Research and development	30,154	24,858	20,731
Consolidation, restructuring and related charges	14,500	38,100	23,000
Operating income	7,793	6,981	20,772
Other income (expense):			
Interest expense	(17,801)	(11,966)	(11,091)
Investment and other income, net	4,510	2,664	5,783
Income (loss) before provision (benefit) for income taxes and minority interest	(5,498)	(2,321)	15,464
Income tax provision (benefit)	(7,019)	(3,000)	4,700
Income before minority interest	1,521	679	10,764
Minority interest in income of consolidated subsidiaries	(6,378)	(4,705)	(588)
Net income (loss)	\$(4,857)	\$(4,026)	\$10,176
Earnings (loss) per share:			
Basic	\$ (0.16)	\$ (0.13)	\$ 0.35
Diluted	\$ (0.16)	\$ (0.13)	\$ 0.34
Weighted average number of common shares outstanding:			
Basic	31,278	29,919	28,761
Diluted	31,278	29,919	29,831

See accompanying notes to consolidated financial statements.

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## PHOTRONICS, INC. AND SUBSIDIARIES

### Consolidated Statements of Shareholders' Equity Years Ended November 3, 2002, October 31, 2001 and 2000 (in thousands)

	<u>Common Stock</u>		<u>Add'l Paid-In Capital</u>	<u>Retained Earnings</u>	<u>Accumulated Other Comprehensive Income (Loss)</u>				<u>Deferred Compensation on Restricted Stock</u>	<u>Total Share- holders' Equity</u>
	<u>Shares</u>	<u>Amount</u>			<u>Unrealized Investment Gains</u>	<u>Cash Flow Hedges</u>	<u>Foreign Currency Translation</u>	<u>Total</u>		
<b>Balance at October 31, 1999</b>	27,925	\$279	\$99,544	\$156,929	\$2,524	-	\$(5,095)	\$(2,571)	\$(51)	\$254,130
Comprehensive Income:										
Net income	-	-	-	10,176	-	-	-	-	-	10,176
Change in unrealized gains on investments	-	-	-	-	2,776	-	-	2,776	-	2,776
Adjustment to reflect Align-Rite's results for the period from October 1, 1999 to October 31, 1999	-	-	-	141	-	-	-	-	-	141
Foreign currency translation adjustment	-	-	-	-	-	-	(10,082)	(10,082)	-	(10,082)
Total comprehensive income (loss)	-	-	-	10,317	2,776	-	(10,082)	(7,306)	-	3,011
Sale of common stock in private placement	1,000	10	21,831	-	-	-	-	-	-	21,841
Sale of common stock through employee stock option and purchase plans	763	8	14,809	-	-	-	-	-	-	14,817
Restricted stock awards, net of amortization to compensation expense	-	-	261	-	-	-	-	-	(80)	181
<b>Balance at October 31, 2000</b>	29,688	297	136,445	167,246	5,300	-	(15,177)	(9,877)	(131)	293,980
Comprehensive income:										
Net loss	-	-	-	(4,026)	-	-	-	-	-	(4,026)
Change in unrealized gains on investments	-	-	-	-	(2,318)	-	-	(2,318)	-	(2,318)
Change in fair value of cash flow hedges	-	-	-	-	-	\$(431)	-	(431)	-	(431)
Foreign currency translation adjustment	-	-	-	-	-	-	(10,114)	(10,114)	-	(10,114)

Total comprehensive loss	-	-	-	(4,026)	(2,318)	(431)	(10,114)	(12,863)	-	(16,889)
Sale of common stock through employee stock option and purchase plans	588	6	9,933	-	-	-	-	-	-	9,939
Amortization of restricted stock to compensation expense	-	-	-	-	-	-	-	-	131	131
<b>Balance at October 31, 2001</b>	<b>30,276</b>	<b>303</b>	<b>146,378</b>	<b>163,220</b>	<b>2,982</b>	<b>(431)</b>	<b>(25,291)</b>	<b>(22,740)</b>	<b>-</b>	<b>287,161</b>
Comprehensive income:										
Net loss	-	-	-	(4,857)	-	-	-	-	-	(4,857)
Change in unrealized gains on investments	-	-	-	-	(2,082)	-	-	(2,082)	-	(2,082)
Change in fair value of cash flow hedges	-	-	-	-	-	(691)	-	(691)	-	(691)
Foreign currency translation adjustment	-	-	-	-	-	-	10,514	10,514	-	10,514
Total comprehensive income (loss)	-	-	-	(4,857)	(2,082)	(691)	10,514	7,741	-	2,884
Sale of common stock through employee stock option and purchase plans	527	5	8,464	-	-	-	-	-	-	8,469
Issuance of common stock in connection with acquisition of additional shares of PKL	1,212	12	40,173	-	-	-	-	-	-	40,185
Restricted stock awards, net of amortization to compensation expense	18	-	573	-	-	-	-	-	(157)	416
<b>Balance at November 3, 2002</b>	<b>32,033</b>	<b>\$320</b>	<b>\$195,588</b>	<b>\$158,363</b>	<b>\$900</b>	<b>\$(1,122)</b>	<b>\$(14,777)</b>	<b>\$(14,999)</b>	<b>\$(157)</b>	<b>\$339,115</b>

See accompanying notes to consolidated financial statements.

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## PHOTRONICS, INC. AND SUBSIDIARIES

### Consolidated Statements of Cash Flows (in thousands)

	Years Ended		
	November 3, 2002	October 31, 2001	October 31, 2000
Cash flows from operating activities:			
Net income (loss)	\$ (4,857)	\$ (4,026)	\$ 10,176
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization of property, plant and equipment	80,402	67,502	53,322
Amortization of intangible assets	2,785	5,473	3,546
Gain on sale of investments	-	-	(6,430)
Gain on repurchase of notes	(2,648)	-	-
Deferred income taxes	(938)	(6,031)	1,251
Restructuring and related charges	14,500	38,100	17,500
Other	1,479	(631)	2,398
Changes in assets and liabilities, net of effects of acquisitions:			
Accounts receivable	9,996	(205)	(3,591)
Inventories	2,194	1,353	596
Other current assets	(11,562)	2,276	(1,171)
Accounts payable and accrued liabilities	45,051	9,768	(28,009)
Net cash provided by operating activities:	136,402	113,579	49,588
Cash flows from investing activities:			
Acquisitions of and investments in photomask operations, net of cash acquired	-	(48,864)	(37,312)
Deposits on and purchase of property, plant and equipment	(126,462)	(48,670)	(43,599)
Purchase of short-term investments	(15,000)	-	-
Proceeds from sale of investments and other	732	(1,026)	6,571
Net cash used in investing activities	(140,730)	(98,560)	(74,340)
Cash flows from financing activities:			
Net borrowings (repayments) of long-term debt	(115,174)	(24,828)	10,376
Proceeds from issuance of common stock and other	4,590	7,817	32,424
Proceeds from issuance of convertible debt, net	193,237	-	-
Net cash provided by (used in) financing activities	82,653	(17,011)	42,800
Effect of exchange rate changes on cash	935	(1,506)	493
Net increase (decrease) in cash and cash equivalents	79,260	(3,498)	18,541
Cash and cash equivalents at beginning of year	34,684	38,182	23,115
Adjustment related to Align-Rite's net cash flows resulting from differences in fiscal reporting periods	-	-	(3,474)
Cash and cash equivalents at end of year	\$113,944	\$ 34,684	\$ 38,182

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**PHOTRONICS, INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements**  
**Years Ended November 3, 2002, October 31, 2001 and 2000**  
*(in thousands, except per share amounts)***NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES****Consolidation**

The accompanying consolidated financial statements include the accounts of Photronics, Inc. and its majority-owned subsidiaries ("Photronics" or the "Company"), in which the Company exercises control. 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.

**Derivative Investments and Hedging Activities**

The Company records derivatives on the balance sheet as assets or liabilities, measured at fair value. Gains or losses resulting from changes in the values of those derivatives are reported in the statement of operations or as accumulated other comprehensive income (loss), 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, the derivative must be highly effective in achieving offsetting changes in fair value or cash flows of the hedged items during the term of the hedge.

**Fiscal Year**

The Company's fiscal year ends on the Sunday closest to October 31, and as a result, a 53 week year occurs every five to six years. Fiscal year 2002 includes 53 weeks. Fiscal years 2001 and 2000 include 52 weeks.

**Cash and Cash Equivalents**

Cash and cash equivalents include cash and highly liquid investments purchased with an original maturity of three months or less. The carrying values approximate fair values based on the short maturity of these instruments.

**Investments**

The Company's investments, comprised of equities and a fixed income bond fund, are classified as available-for-sale, and are carried at fair value. Investments available for current operations are classified in the consolidated balance sheets as current assets; investments held for long-term purposes are classified as non-current assets. Unrealized gains and losses, net of tax, are reported as other comprehensive income (loss) as a separate component of shareholders' equity. Gains and losses are included in income when realized, determined based on the disposition of specifically identified investments.

**Inventories**

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

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**Property, Plant and Equipment**

Property, plant and equipment is 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 eliminated from the accounts, and any resulting gain or loss is reflected in income.

For financial reporting purposes, depreciation and amortization are computed on 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 of the lease or the estimated useful life of the improvement, whichever is less.

**Intangible Assets**

Intangible assets consist primarily of goodwill and other acquisition-related intangibles, and software development costs. These assets are stated at fair value as of the date acquired less accumulated amortization. Amortization is calculated on a straight-line basis over an estimated useful life of 5 years for software development costs and, prior to November 1, 2001, 3 to 15 years for goodwill and acquisition-related assets (see Note 5). As a result of the adoption of SFAS No. 142, the future economic benefit of the carrying value of all intangible assets (see Note 5) is reviewed periodically and any diminution in useful life or impairment in value based on future anticipated undiscounted cash flows or market factors would be recorded in the period so determined.

**Income Taxes**

The provision for income taxes is computed on the basis of consolidated financial statement income. Deferred income taxes reflect the tax effects of differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for income tax purposes.

**Earnings Per Share**

Basic 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 records stock option awards in accordance with the provisions of Accounting Principles Board Opinion 25, "Accounting for Stock Issued to Employees." The Company estimates the fair value of stock option awards in accordance with SFAS No. 123, "Accounting for Stock-Based Compensation," and discloses the resulting estimated compensation effect on net income on a pro forma basis.

### Foreign Currency Translation

The Company's foreign 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 as other comprehensive income (loss) as a separate component of shareholders' equity. The effects of changes in exchange rates on foreign currency transactions are included in income.

### Revenue Recognition

The Company recognizes revenue upon shipment of goods to customers.

### Reclassifications

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

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## NOTE 2 - BUSINESS COMBINATIONS

### Acquisition of PKL Ltd.

In 2001, the Company completed the acquisition of a majority of the total share capital (approximately 51%) of PKL Ltd. ("PKL"), a photomask manufacturer based in Korea for approximately \$56 million. In April of 2002, the Company acquired an additional 28% of PKL in exchange for 1,212,218 shares of Photronics common stock. The acquisition was accounted for as a purchase and accordingly goodwill in the aggregate of \$69.4 million was recorded. The operating results of PKL have been included in the consolidated statements of operations from August 27, 2001, the date the Company acquired majority share.

The following table presents unaudited consolidated pro forma information as if the initial acquisition of approximately 51% of PKL and the additional acquisition of approximately 28% of PKL had occurred as of the beginning of the periods presented:

	Year Ended		
	November 3, 2002	October 31, 2001	October 31, 2000
Net sales	\$386,871	\$416,274	\$378,386
Net (loss) income	\$ (3,927)	\$ (751)	\$ 13,742
Diluted (loss) earnings per share	\$ (0.13)	\$ (0.03)	\$ 0.46

In management's opinion, these unaudited consolidated pro forma amounts are not necessarily indicative of what the actual combined results of operations might have been had the acquisitions of PKL stock occurred at the beginning of the periods presented.

### Acquisition of PSMC

Effective June 20, 2000, the Company acquired a majority of the total share capital of Precision Semiconductor Mask Corporation ("PSMC"), a photomask manufacturer based in Taiwan, for approximately \$63.4 million. The acquisition was accounted for as a purchase. Accordingly, a portion of the purchase price has been allocated to assets acquired and liabilities assumed based upon estimated fair value at the date of acquisition, while the balance of \$31.2 million was recorded as goodwill. The operating results of PSMC have been included in the consolidated statement of operations from the date of acquisition.

Unaudited consolidated information as if the acquisition of PSMC had occurred as of the beginning of the fiscal year ended October 31, 2000 follows: net sales - \$343,248; net income - \$6,508; and diluted earnings per share - \$0.22. In management's opinion, these unaudited consolidated pro forma amounts are not necessarily indicative of what the actual combined results of operations might have been if the acquisition of PSMC had been effective at the beginning of the fiscal year ended October 31, 2000.

### Align-Rite Merger

On June 7, 2000, Photronics completed its merger with Align-Rite International, Inc. ("Align-Rite"). Under the terms of the merger agreement, each of the 4,731,232 shares of common stock of Align-Rite issued and outstanding as of June 7, 2000 was converted into 0.85 shares of common stock of Photronics. Cash was paid in lieu of the issuance of any fractional shares of Photronics that would otherwise have been issued. Any stock options to acquire Align-Rite common stock that had not been exercised as of June 7, 2000 became fully vested options to acquire Photronics common stock in accordance with the merger agreement. The merger constituted a tax-free reorganization and has been accounted for as a pooling-of-interests. Accordingly, the consolidated financial statements for the year ended October 31, 2000 and the accompanying notes thereto reflect the Company's financial position, results of operations and cash flows as if Align-Rite had been a wholly owned subsidiary of Photronics for the entire fiscal year.

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The Company recorded a pre-tax charge of approximately \$5.5 million for transaction costs incurred in connection with the merger. Such costs consisted primarily of fees for investment bankers, attorneys, accountants, financial printing and other related charges.

### NOTE 3 - INVESTMENTS

Short-term investments at November 3, 2002 consist of available-for-sale fixed income and equity securities; there were no short-term investments at October 31, 2001. Long-term investments (\$2,554 at November 3, 2002 and \$6,658 at October 31, 2001) included in "Other Assets" primarily consist of available-for-sale equity securities, where fair values were determined based upon quoted market prices. For investments with no quoted market price, the estimated fair value is based upon the financial condition and the operating results and projections of the investee and is considered to approximate cost. Unrealized gains on investments were determined as follows:

	November 3, 2002	October 31, 2001
Fair value	\$17,702	\$ 6,658
Cost	16,095	1,851
	1,607	4,807
Less deferred income taxes	707	1,825
Net unrealized gains	<u>\$ 900</u>	<u>\$ 2,982</u>

### NOTE 4 - PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment consists of the following:

	November 3, 2002	October 31, 2001
Land	\$ 5,224	\$ 3,129
Buildings and improvements	43,526	32,090
Machinery and equipment	729,782	612,042
Leasehold improvements	23,168	20,331
Furniture, fixtures and office equipment	27,096	26,344
	828,796	693,936
Less accumulated depreciation and amortization	384,936	291,160
	<u>\$443,860</u>	<u>\$402,776</u>

### NOTE 5 - INTANGIBLE ASSETS

Effective November 1, 2001 the Company adopted SFAS No. 142, "Goodwill and Other Intangible Assets." This standard changed the accounting for goodwill and intangible assets with an indefinite life whereby such assets are no longer amortized; however, the standard does require evaluation for impairment and a corresponding writedown, if appropriate. SFAS No. 142 requires an initial evaluation of goodwill and impairment upon adoption and annual evaluations thereafter. The initial evaluation was performed as of November 1, 2001 and a subsequent evaluation was performed in fiscal year 2002 resulting in no impairment in the value of the Company's goodwill.

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Comparative information as if goodwill had not been amortized follows (in thousands, except per share information):

	Year Ended		
	November 3, 2002	October 31, 2001	October 31, 2000
Reported net income (loss)	\$(4,857)	\$(4,026)	\$10,176
Goodwill amortization	-	1,111	577
Adjusted net income (loss)	<u>\$(4,857)</u>	<u>\$(2,915)</u>	<u>\$10,753</u>
Reported diluted earnings (loss) per share	\$ (0.16)	\$ (0.13)	\$ 0.34
Goodwill amortization	-	0.04	0.02
Adjusted net income (loss)	<u>\$ (0.16)</u>	<u>\$ (0.09)</u>	<u>\$ 0.36</u>

Goodwill at November 3, 2002 and October 31, 2001 amounted to approximately \$115.9 million and \$85.1 million, respectively. Other intangible assets, which continue to be amortized, consist of software development costs and a non-compete agreement. The balance of other intangible assets consists of a gross carrying amount of \$13,054 at November 3, 2002 and \$12,984 at October 31, 2001, less accumulated amortization of \$7,702 and \$4,911 at November 3, 2002 and October 31, 2001, respectively.

Amortization expense of other intangible assets for each of the fiscal years ended November 3, 2002 and October 31, 2001 was approximately \$2.8 million. Estimated annual amortization expense of other intangible assets is expected to be \$2,799 in 2003 and \$2,553 in 2004.

#### NOTE 6 - ACCRUED LIABILITIES

Accrued liabilities consist of the following:

	November 3, 2002	October 31, 2001
Salaries, wages and related benefits	\$ 8,348	\$ 8,530
Income taxes	6,833	7,092
Restructuring	5,956	7,557
Interest	5,322	3,386
Other	12,523	5,039
	<u>\$38,982</u>	<u>\$31,604</u>

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#### NOTE 7 - LONG-TERM DEBT

Long-term debt consists of the following:

	November 3, 2002	October 31, 2001
6% convertible subordinated notes due June 1, 2004	\$ 62,100	\$103,300
4.75% Convertible subordinated notes due December 15, 2006, including \$1,672 fair value of interest rate swap contract	201,672	-
Debt of non-wholly owned subsidiaries:		
Borrowings under current revolving credit facility	10,630	-
Unsecured notes payable	12,877	-
Secured notes payable	19,963	35,677
10.7% bond payable	-	11,613
Borrowings under former revolving credit facility	-	58,311
Other	192	260
	<u>307,434</u>	<u>209,161</u>
Less current portion	10,649	21,140
Long-term debt	<u>\$296,785</u>	<u>\$188,021</u>

Long-term debt matures as follows: 2003 - \$10,649; 2004 - \$67,441; 2005 - \$26,476; 2006 - \$1,196 and 2007 - \$201,672. The fair value of long-term debt not yet substantively extinguished is estimated based on the current rates offered to the Company and is not significantly different from the carrying value, except that the fair value of the 6% and the 4.75% Convertible subordinated notes, based upon the most recently reported trade as of November 3, 2002, amounted to \$57,986 and \$156,750, respectively.

On December 12, 2001 the Company sold \$200 million of 4.75% convertible subordinated notes due 2006 in a private offering pursuant to SEC Rule 144A. These notes are convertible into the Company's common stock at a conversion price of \$37.00 per share. Net proceeds from the issuance amounted to approximately \$193.2 million. Concurrent with the issuance of the Notes, on December 12, 2001 the Company repaid all of the outstanding borrowings under its former revolving credit agreement which amounted to \$57.7 million and terminated the agreement.

The \$100 million notional amount of the 4.75% convertible notes which have been effectively converted to a variable rate under an interest rate swap contract are stated at an amount equal to the sum of its principal amount plus \$1,672 representing the change in the fair value of the debt obligation attributable to the interest rate risk being hedged. This fair value adjustment has been calculated using a discounted cash flow methodology (see Note 14).

In July 2002, the Company entered into a credit agreement with a group of financial institutions that provides for a three-year, revolving credit facility with an aggregate commitment of \$100 million. The credit facility allows for borrowings in various currencies and includes a provision which allows for an increase in aggregate commitments up to \$125 million upon the conversion of at least 50% of the Company's \$103 million, 6% convertible subordinated notes due June 1, 2004. The interest rate is based on the terms of the agreement and will vary based on currencies borrowed and market conditions. The effective interest rate for fiscal 2002 was approximately 7%. Currently the facility fee is 0.4% of total aggregate commitments. As of November 3, 2002, \$89.4 million was available under the facility. The Company is subject to compliance with and maintenance of certain financial and other covenants, and matters set forth in the agreement, including a limitation on cash dividends available for payment to shareholders. The credit facility is secured by a pledge of the Company's stock in certain of its subsidiaries.

Committed credit available under the revolving credit facility provides management with the ability to refinance a portion of its debt on a long-term basis. At November 3, 2002, \$12.1 million in outstanding foreign borrowings due in the course of the next year were classified as long-term debt based on the Company's ability and intent to refinance these borrowings on a long-term basis utilizing the credit available under the revolving credit facility.

In the fourth quarter of fiscal 2002, the Company repurchased \$41.2 million of its 6% convertible notes for total consideration of \$38.2 million. The Company recorded a gain on the repurchase of those notes of \$2.6 million, net of the write off of deferred financing fees associated with the portion of 6% convertible notes that were repurchased. In 2002 the Company adopted SFAS No. 145, "Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections." SFAS No. 145 rescinds certain guidance for reporting extinguishments of debt and provides guidance to determine if the transactions are part of recurring operations or if they meet the criteria for classification as an extraordinary item. The Company has classified the gain in other income.

The unsecured and secured notes payable are obligations of non-wholly owned subsidiaries and are not guaranteed by the Company. Unsecured notes payable consist primarily of working capital loans with interest rates ranging from approximately 6.3% to 6.5%. Secured notes payable consist primarily of collateralized equipment loans with interest rates ranging from approximately 2.5% to 6.7% and are due in monthly installments through May 2006.

Interest payments were \$15,749, \$11,006 and \$11,724 in 2002, 2001 and 2000, respectively.

#### NOTE 8 - EARNINGS PER SHARE

A reconciliation of basic and diluted EPS as follows:

	Net Income (Loss)	Average Shares Outstanding	Earnings (Loss) Per Share
2002:			
Basic	\$(4,857)	31,278	\$(0.16)
Effect of potential dilution from exercise of stock options	-	-	-
Diluted	\$(4,857)	31,278	\$(0.16)
2001:			
Basic	\$(4,026)	29,919	\$(0.13)
Effect of potential dilution from exercise of stock options	-	-	-
Diluted	\$(4,026)	29,919	\$(0.13)
2000:			
Basic	\$10,176	28,761	\$ 0.35
Effect of potential dilution from exercise of stock options	-	1,070	-
Diluted	\$10,176	29,831	\$ 0.34

The effect of the potential conversion of notes into 7.6 million shares of common stock would be anti-dilutive for all years presented. If the assumed conversion of convertible subordinated notes and stock options had been dilutive, the incremental additional shares outstanding would have been 8,849 in 2002, 4,453 in 2001 and 3,700 in 2000.

#### NOTE 9 - INCOME TAXES

The provision (benefit) for income taxes consists of the following:

	2002	2001	2000
Current:			
Federal	\$(7,870)	\$ 619	\$1,344
State	67	127	54
Foreign	1,722	2,285	2,051
	(6,081)	3,031	3,449
Deferred:			
Federal	(2,886)	(7,078)	1,498
State	52	(913)	(12)
Foreign	1,896	1,960	(235)
	(938)	(6,031)	1,251
Total	\$(7,019)	\$(3,000)	\$4,700

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

	<u>2002</u>	<u>2001</u>	<u>2000</u>
U.S. Federal income tax at statutory rate	\$(1,924)	\$ (810)	\$5,413
State income taxes, net of federal benefit	(2,159)	(770)	23
Valuation allowance, state income taxes	2,189	-	-
Foreign tax rate differential	(4,097)	(3,920)	(1,399)
Other, net	(1,028)	2,500	663
	<u>\$(7,019)</u>	<u>\$(3,000)</u>	<u>\$4,700</u>

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The net deferred income tax liability consists of the following:

	<u>November 3, 2002</u>	<u>October 31, 2001</u>
<b>Deferred income tax assets:</b>		
Reserves not currently deductible	\$ 9,498	\$ 4,482
Intangibles amortization	1,798	2,367
Net operating losses	9,576	15,630
Alternative minimum tax credits	3,205	831
Tax credit carryforwards	3,810	2,783
Foreign exchange gain	1,626	-
Intercompany transactions	2,971	6,661
Non qualified stock options	1,825	956
Other	2,028	2,454
	<u>36,337</u>	<u>36,164</u>
Valuation allowance	(2,510)	(293)
	<u>33,827</u>	<u>35,871</u>
<b>Deferred income tax liabilities:</b>		
Property, plant and equipment	43,113	36,981
Investments	1,846	2,964
Research and development costs	657	948
Other	271	276
	<u>45,887</u>	<u>41,169</u>
<b>Net deferred tax liability</b>	<u>\$12,060</u>	<u>\$ 5,298</u>

Cash paid for income taxes amounted to \$0.8 million, \$2.0 million and \$0.9 million in 2002, 2001 and 2000 respectively. Cash received for refunds of income taxes paid in prior years amounted to \$13.5 million in 2002 and \$4.1 million in 2000.

As of November 3, 2002, the Company had a federal net operating loss carryforward of \$17.2 million; \$5.0 million expires in 2020 and \$12.2 million expires in 2022. The Company expects to fully utilize these carryforwards, thus a deferred tax asset has been established.

The Company established a valuation reserve against various state net operating loss carryovers because the possibility exists that these net operating loss carryovers may expire prior to their utilization.

As of November 3, 2002, the Company has \$3.2 million of alternative minimum tax credit carryforwards that are available to offset future federal taxes payable. The Company also has a \$0.9 million general business credit carryforward available as a tax credit until year 2019 when, if still unused, will convert into a tax deduction.

As of November 3, 2002, deferred income taxes approximating \$35.7 million were not provided on undistributed earnings of certain foreign subsidiaries because such undistributed earnings are expected to be reinvested indefinitely overseas.

Deferred tax benefits from the exercise of non qualified stock options recorded as an increase to additional paid-in capital amounted to \$1.8 million and \$1.0 million in 2002 and 2001, respectively.

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#### NOTE 10 - EMPLOYEE STOCK PURCHASE AND OPTION PLANS

In 2000, the shareholders approved the adoption of the 2000 Stock Option Plan which includes provisions allowing for the award of qualified and non-qualified stock options and the granting of restricted stock awards. A total of 2.5 million shares of common stock may be issued pursuant to options or restricted

stock awards granted under the Plan. Restricted stock awards do not require the payment of any cash consideration by the recipient, but shares subject to an award may be forfeited unless conditions specified in the grant are satisfied.

The Company has previously adopted other stock option plans under which incentive and non-qualified stock options and restricted stock awards may be granted. All plans provide that the exercise price may not be less than the fair market value of the common stock at the date the options are granted and limit the term of options granted to a maximum of ten years.

The following table summarizes stock option activity for each of the three years ended November 3, 2002, October 31, 2001 and 2000 under the plans:

	<u>Stock Options</u>	<u>Exercise Prices</u>		
<b>Balance at October 31, 1999</b>	2,828,200	\$0.94	-	\$31.44
Granted	848,281	22.13	-	27.88
Exercised	(646,464)	0.94	-	22.38
Cancelled	(236,351)	3.08	-	31.44
<b>Balance at October 31, 2000</b>	2,793,666	0.94	-	31.44
Granted	352,950	16.12	-	27.34
Exercised	(428,092)	0.94	-	31.44
Cancelled	(131,287)	11.00	-	31.44
<b>Balance at October 31, 2001</b>	2,587,237	0.94	-	31.44
Granted	791,723	15.90	-	32.47
Exercised	(485,705)	0.94	-	26.25
Cancelled	(204,520)	2.67	-	27.88
<b>Balance at November 3, 2002</b>	<u>2,688,735</u>			

The following table summarizes information concerning currently outstanding and exercisable options as of November 3, 2002:

	<u>Range of Exercise Prices</u>		
	<u>\$0.94 - \$10.00</u>	<u>\$10.00 - \$20.00</u>	<u>\$20.00 - \$31.44</u>
<b>Outstanding:</b>			
Number of options	99,036	964,473	1,625,226
Weighted average remaining years	2.0	5.8	7.1
Weighted average exercise price	\$6.63	\$14.15	\$24.51
<b>Exercisable:</b>			
Number of options	95,286	607,675	539,843
Weighted average exercise price	\$6.89	\$12.99	\$23.00

At November 3, 2002, 1,475,564 shares were available for grant and 1,242,804 shares were exercisable at a weighted average exercise price of \$16.87.

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The Company has not recognized compensation expense in connection with stock option grants under the plans. However, had compensation expense been determined based on the fair value of the options on the grant dates, the Company's pro forma net (loss) income and earnings (loss) per share would have been increased (decreased) by approximately \$(0.1) million, or \$(0.00) per diluted share in 2002, by approximately \$(0.4) million, or \$(0.01) per diluted share in 2001, and by approximately \$1.4 million, or \$0.05 per diluted share in 2000. The weighted average fair value of options granted was \$24.16 per share in 2002, \$18.66 per share in 2001 and \$23.76 per share in 2000. Fair value is estimated based on the Black-Scholes option-pricing model with the following weighted average assumptions: dividend yield of 0%; expected volatility of 70.9% in 2002, 75.2% in 2001 and 68.8% in 2000; and risk-free interest rates of 3.0% in 2002, 6.0% in 2001, and 7.5% in 2000.

The Company maintains an Employee Stock Purchase Plan ("Purchase Plan"), under which 600,000 shares of common stock were reserved for issuance. The Purchase Plan enables eligible employees to subscribe, through payroll deductions, to purchase shares of the Company's common stock at a purchase price equal to 85% of the lower of the fair market value on the commencement date of the offering and the last day of the payroll payment period. At November 3, 2002, 205,652 shares had been issued and 83,353 shares were subject to outstanding subscriptions under the Purchase Plan.

#### **NOTE 11 - EMPLOYEE BENEFIT PLANS**

The Company maintains a 401(k) Savings and Profit-Sharing Plan (the "Plan") which covers all domestic employees who have completed six months of service and are eighteen years of age or older. Under the terms of the Plan, employees may contribute up to 25% of their compensation, 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 \$0.7 million in 2002, \$0.9 million in 2001 and \$0.9 million in 2000.

The Company maintains a cafeteria plan to provide eligible domestic employees with the option to receive non-taxable medical, dental, disability and life insurance benefits. The cafeteria plan is offered to all active full-time domestic employees and their qualifying dependents. The Company's contribution amounted to \$5.5 million in 2002, \$5.7 million in 2001 and \$5.4 million in 2000.

The Company's foreign subsidiaries maintain benefit plans for their employees, which vary by country. The obligations and cost of these plans are not significant to the Company.

**NOTE 12 - LEASES**

The Company leases various real estate and equipment under non-cancelable operating leases. Rental expense under such leases amounted to \$2.6 million in 2002, \$1.6 million in 2001 and \$2.2 million in 2000.

Future minimum lease payments (excluding costs associated with facilities closed under restructuring plans) under non-cancelable operating leases with initial or remaining terms in excess of one year at November 3, 2002 follow:

2003	\$2,462
2004	1,947
2005	1,642
2006	1,027
2007	1,013
Thereafter	930
	\$9,021

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**NOTE 13 - COMMITMENTS AND CONTINGENCIES**

At November 3, 2002 the Company had capital expenditure purchase commitments outstanding of approximately \$30 million.

Financial instruments that potentially subject the Company to credit risk consist principally of trade receivables 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. Historically, the Company has not incurred any significant credit-related losses.

**NOTE 14 - DERIVATIVE INSTRUMENTS, HEDGING INSTRUMENTS AND HEDGING ACTIVITY**

On October 22, 2002, the Company entered into an interest rate swap contract, which effectively converted \$100 million of its 4.75% fixed rate convertible notes to a variable rate. Under the contract, payments are made on a LIBOR based variable rate (2.98% at November 3, 2002).

The interest rate swap contract is used to adjust the proportion of total debt that is subject to fixed interest rates. This contract is considered to be a hedge against changes in the fair value of the Company's fixed rate debt obligation. Accordingly, the interest rate swap contract is stated at fair value in the Company's consolidated balance sheet and the related portion of fixed rate debt being hedged is stated at an amount equal to the sum of its principal amount plus an adjustment representing the change in fair value of the debt obligation attributable to the interest rate risk being hedged. In addition, changes during any accounting period in the fair value of the interest rate swap contract, as well as offsetting changes in the adjusted carrying value of the related portion of fixed rate debt being hedged, are recognized as adjustments to interest expense in the Company's consolidated statement of operations. The net effect of this interest rate swap contract on the Company's statement of operations is that the interest expense portion of fixed rate debt being hedged is generally recorded based on variable rates.

At November 3, 2002 the interest rate swap contract was recorded as an asset of \$1.6 million in the Company's consolidated balance sheet. The fair value adjustment for the related portion of fixed rate debt being hedged increased the \$100 million carrying amount of such debt by approximately \$1.7 million (See Note 7). These fair values have been calculated using a discounted cash flow methodology. The net gain or loss on the ineffective portion of the interest rate swap contract was not material to the Company's consolidated statement of operations.

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**NOTE 15 - SEGMENT INFORMATION**

The Company operates in a single industry 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. In addition to its manufacturing facilities in the United States, the Company currently has operations in the United Kingdom, Germany, Switzerland, Singapore, Taiwan, and Korea. The Company's 2002, 2001 and 2000 net sales, operating income (loss) and identifiable assets by geographic area were as follows:

	Net Sales	Operating Income (Loss)	Identifiable Assets
<b>2002:</b>			
North America	\$194,279	\$(27,807)	\$460,099
Europe	63,192	11,936	120,509
Asia	129,400	23,664	251,834
	\$386,871	\$ 7,793	\$832,442
<b>2001:</b>			
North America	\$241,873	\$(12,980)	\$332,706
Europe	64,809	7,905	94,818
Asia	71,287	12,056	233,174
	\$377,969	\$ 6,981	\$660,698

<b>2000:</b>			
North America	\$240,013	\$ 9,599	\$412,930
Europe	59,211	7,143	93,727
Asia	31,988	4,030	98,319
	<u>\$331,212</u>	<u>\$ 20,772</u>	<u>\$604,976</u>

Approximately 4% of net domestic sales in 2002, 2001 and 2000 were for delivery outside of the United States.

During fiscal 2002 one customer accounted for 10.4% of the Company's net sales. During fiscal 2001 and 2000, no single customer accounted for more than 10% of total net sales.

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#### NOTE 16 - COMPREHENSIVE INCOME (LOSS)

The Company's comprehensive income (loss) 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, which are presented before-tax. The Company does not provide for U.S. income taxes on foreign currency translation adjustments. Accumulated other comprehensive income (loss) consists of unrealized gains and losses on certain investments in equity securities and foreign currency translation adjustments. The related tax effects allocated to each component of other comprehensive income (loss) were as follows for the three fiscal years ended November 3, 2000, October 31, 2001 and 2000:

	<u>Before-Tax Amount</u>	<u>Tax (Expense) or Benefit</u>	<u>Net-of-Tax Amount</u>
<b>2002:</b>			
Foreign currency translation adjustment	\$10,514	-	\$10,514
Loss on change in fair value of cash flow hedge	(691)	-	(691)
Unrealized holding losses arising during the period	(3,200)	1,118	(2,082)
	<u>\$ 6,623</u>	<u>\$ 1,118</u>	<u>\$ 7,741</u>
Other comprehensive income			
<b>2001:</b>			
Foreign currency translation adjustment	\$(10,114)	-	\$(10,114)
Loss on change in fair value of cash flow hedge	(431)	-	(431)
Unrealized holding losses arising during the period	(4,803)	2,485	(2,318)
	<u>\$ (15,348)</u>	<u>\$ 2,485</u>	<u>\$ (12,863)</u>
Other comprehensive loss			
<b>2000:</b>			
Foreign currency translation adjustment	\$(10,082)	-	\$(10,082)
Unrealized gains on investments:			
Unrealized holding gains arising during the period	10,499	(3,318)	7,181
Reclassification adjustment for gains realized in net income	(6,430)	2,025	(4,405)
	<u>4,069</u>	<u>(1,293)</u>	<u>2,776</u>
Net unrealized gains			
Other comprehensive loss	<u>\$ (6,013)</u>	<u>\$ (1,293)</u>	<u>\$ (7,306)</u>

#### NOTE 17 - CONSOLIDATION, RESTRUCTURING AND RELATED CHARGES

On August 14, 2002 the Company implemented a plan to reduce its operating cost structure by reducing its work force in the United States by approximately 135 employees and by ceasing the manufacture of photomasks at its Milpitas, California facility. Total consolidation and related charges of \$14.5 million were recorded in the fourth quarter of 2002. Of the total charge, \$10.5 million was non-cash for the impairment in carrying value of fixed assets, \$2.5 million of cash charges for severance and benefits for terminated employees that will be paid during their entitlement periods, and \$1.5 million of cash charges for facilities closing costs as well as lease termination costs. Through November 3, 2002, cash charges of approximately \$1.5 million had been expended.

In April 2001, the Company initiated a plan to consolidate its global photomask manufacturing network in order to increase capacity utilization and manufacturing efficiencies, as well as accelerate the expansion of its world-class technology development. The Company initiated this plan as the final phase of its June 2000 merger with Align-Rite. Total associated consolidation and related charges associated with this plan of \$38.1 million were recorded in the second quarter of 2001. Of the total charge, \$30.6 million related to this plan and \$7.5 million related to the impairment of associated intangible assets that no longer had any future economic benefit to the Company. A significant component of this plan included the closing of the former Align-Rite manufacturing facilities in Burbank, California, Palm Bay, Florida and Heilbronn, Germany which resulted in a reduction in work force of approximately 120 employees. The consolidation

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charge of \$30.6 million includes: \$4.0 million of cash charges for severance benefits for terminated employees paid during their entitlement periods; \$4.5 million for facilities closings and lease termination costs expended over the projected lease terms; and non-cash charges of \$22.1 million that approximate the carrying value of fixed assets that are primarily associated with this plan based upon their expected disposition. Through November 3, 2002 cash charges of approximately \$6.1 million had been expended.

During March 2000, the Company implemented a plan to restructure its mature products group in order to increase capacity utilization, manufacturing efficiencies and customer service activities worldwide. Total charges associated with this restructuring plan of \$17.5 million were recorded in the second quarter of 2000. Of the total charge, \$9.1 million related to restructuring and \$8.4 million related to the impairment of associated intangible assets because such assets no longer had future economic benefit to the Company. The significant components of the restructuring plan included the closing of the Company's Sunnyvale, California and Neuchatel, Switzerland manufacturing facilities and the consolidation and regionalization of sales and customer service functions. As part of the plan, the Company reduced its work force by approximately 125 employees. The restructuring charge of \$9.1 million includes \$1.5 million of cash charges for severance benefits paid to terminated employees which was disbursed over their entitlement periods and \$2.3 million for facilities closings and lease termination costs expended through the first quarter of 2001. Additionally, non-cash charges of \$5.3 million approximated the carrying value primarily of fixed assets associated with the manufacturing restructuring based upon their expected disposition.

#### NOTE 18 - RELATED PARTY TRANSACTIONS

In June of 2002 the Company purchased land from an entity controlled by the Chairman of the Board of the Company for approximately \$530 thousand. The Company also purchased in June 2002 one of its manufacturing facilities (the "purchased manufacturing facility") and the land in June 2002 from an entity controlled by the Chairman's two sons, one of whom is a Board member, for approximately \$2.2 million. The purchase price for both transactions was equal to the appraised value as established by independent appraisals obtained by the Company.

The Company previously leased the purchased manufacturing facility from the entity controlled by the Chairman's two sons prior to the purchase by the Company. The rent paid to this entity for the fiscal year ended November 3, 2002 was approximately \$45 thousand.

The Chairman of the Board of the Company is also the Chairman of the Board and majority shareholder of a company who is a supplier of secure managed information technology services. Another director of the Company is also an employee and a director of this company. In 2002 the Company entered into a fifty-two month service contract with this company to provide services to all of the Company's worldwide facilities at a cost of approximately \$3.2 million per year. In 2002 the Company incurred expenses of \$2.4 million related to services provided by this company of which \$302 thousand was owed to this company at November 3, 2002.

The Company believes that the terms of the transactions described above with affiliated persons were negotiated at arm's-length and were no less favorable to the Company than the Company could have obtained from non-affiliated parties.

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#### NOTE 19 - 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>2002:</b>					<b>(a)</b>
Net sales	\$95,686	\$103,057	\$98,070	\$90,058	\$386,871
Gross margin	27,932	31,738	28,078	22,672	110,420
Net income (loss)	1,747	2,519	1,185	(10,308)	(4,857)
Earnings (loss) per share:					
Basic	0.06	0.08	0.04	(0.32)	(0.16)
Diluted	0.06	0.08	0.04	(0.32)	(0.16)
<b>2001:</b>					<b>(b)</b>
Net sales	\$98,557	\$100,572	\$85,016	\$93,824	\$377,969
Gross margin	35,328	36,337	24,447	27,585	123,697
Net income (loss)	8,402	(16,191)	1,777	1,986	(4,026)
Earnings (loss) per share:					
Basic	\$ 0.28	\$ (0.54)	\$ 0.06	\$ 0.07	\$ (0.13)
Diluted	\$ 0.28	\$ (0.54)	\$ 0.06	\$ 0.07	\$ (0.13)

a) Includes consolidation charges of \$14.5 million (\$10.0 million after tax, or \$0.32 per diluted share), recorded in the fourth quarter, in connection with reduction in workforce in the United States and ceasing the manufacture of photomasks at the Milpitas, California facility.

b) Includes consolidation charges of \$38.1 million (\$26.1 million after tax, or \$0.87 per diluted share), recorded in the second quarter, in connection with the final phase of the Company's merger with Align-Rite International, Inc. and subsequent consolidation of facilities in California, Florida and Germany.

#### NOTE 20 - OTHER RECENT ACCOUNTING PRONOUNCEMENTS

In June 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 143, "Accounting for Asset Retirement Obligations." SFAS No. 143 supersedes previous guidance for financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. This statement applies to legal obligations associated with the retirement of long-lived assets that result from the acquisition, construction, development and (or) the normal operation of a long-lived asset.

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." SFAS No. 144 supersedes previous guidance for financial accounting and reporting for the impairment or disposal of long-lived assets.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities". SFAS No. 146 nullifies Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)."



In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure, an Amendment of FASB Statement No. 123." SFAS No. 148 requires quarterly disclosure of pro forma stock compensation information.

In November 2002, the FASB issued FASB Interpretation ("FIN") No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." FIN No. 45 clarifies and expands existing disclosure requirements for guarantees, including loan guarantees.

In January 2003, the FASB issued FIN No. 46, "Consolidation of Variable Interest Entities - an Interpretation of Accounting Research Bulletin No. 51." FIN No. 46 clarifies rules for consolidation of special purpose entities.

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SFAS No.'s 143, 144, 146 and 148 and FIN No's. 45 and 46 become effective for the Company's financial statements for fiscal year 2003. The Company does not expect the adoption of these statements to have a material impact on its consolidated financial position, consolidated results of operations or consolidated cash flows.

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

There were no disagreements on any accounting and financial disclosure matters between the Company and its independent certified public accountants for which a Form 8-K was required to be filed during the 24 months ended November 3, 2002 or for the period from November 3, 2002 to the date hereof.

### **PART III**

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

The information as to Directors required by Item 401 and 405 of Regulation S-K is set forth in the Company's definitive proxy statement (the "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 "ELECTION OF DIRECTORS" and is incorporated herein by reference. The information as to Executive Officers is included in the Definitive Proxy Statement under the caption "Executive Officers" and is incorporated herein by reference.

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

The information required by Item 402 of Regulation S-K is set forth in the Definitive Proxy Statement under the captions "EXECUTIVE COMPENSATION" and "DIRECTORS' COMPENSATION" and is incorporated herein by reference.

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

The information required by Item 403 of Regulation S-K is set forth in the Definitive Proxy Statement under the caption "OWNERSHIP OF COMMON STOCK BY DIRECTORS, NOMINEES, OFFICERS AND CERTAIN BENEFICIAL OWNERS" and is incorporated herein by reference.

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

The information required by Item 404 of Regulation S-K is set forth in the Definitive Proxy Statement under the caption "CERTAIN TRANSACTIONS" and is incorporated herein by reference.

#### **ITEM 14. CONTROLS AND PROCEDURES**

Our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO") have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-4(c) and 15d-14(c) of the Securities Exchange Act of 1934, as amended) as of a date ("Evaluation Date") within 90 days prior to the filing date of this annual report. Based on such evaluation, our CEO and CFO have each concluded that as of the Evaluation Date, our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Securities and Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. There were no significant changes in our internal controls or in other factors that could significantly affect the internal controls subsequent to the Evaluation Date.

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### **PART IV**

#### **ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K**

(A) The following documents are filed as part of this report:

- 1) Financial Statements

Independent Auditor's Reports

Consolidated Balance Sheets at November 3, 2002 and October 31, 2001

Consolidated Statements of Operations for the years ended November 3, 2002, October 31, 2001

and 2000

Consolidated Statements of Shareholders' Equity for the years ended November 3, 2002,  
October 31, 2001 and 2000

Consolidated Statements of Cash Flows for the years ended November 3, 2002, October 31, 2001  
and 2000

Notes to Consolidated Financial Statements

2) Financial Statement Schedules

Schedules for which provision is made in Regulation S-X of the Securities and Exchange Commission  
are not required under the related instructions or are inapplicable and, therefore, have been omitted.

3) Exhibits: See Exhibits Index

(B) Reports on Form 8-K

Two reports on Form 8-K were filed by the Company during the fourth quarter ended November 3, 2002.

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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 30, 2003

Sean T. Smith  
Vice President  
Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1932, 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 30, 2003

Constantine S. Macricostas  
Chairman of the Board  
Director

By /s/ DANIEL DEL ROSARIO

January 30, 2003

Daniel Del Rosario  
Chief Executive Officer  
Director

By /s/ SEAN T. SMITH

January 30, 2003

Sean T. Smith  
Vice President  
Chief Financial Officer

By /s/ WALTER M. FIEDEROWICZ

January 30, 2003

Walter M. Fiederowicz  
Director

By /s/ JOSEPH A. FIORITA, JR.

January 30, 2003

Joseph A. Fiorita, Jr.  
Director

By /s/ GEORGE MACRICOSTAS

January 30, 2003

George Macricostas  
Director

By /s/ WILLEM D. MARIS

\_\_\_\_\_  
Willem D. Maris  
Director

January 30, 2003

By /s/ MICHAEL J. YOMAZZO

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Michael J. Yomazzo  
Director

January 30, 2003

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## CERTIFICATIONS

I, Daniel Del Rosario:

1. I have reviewed this annual report on Form 10-K of Photronics, Inc.;
2. Based on my knowledge, this annual 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 annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
  - a) designed such disclosure controls and procedures 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 annual report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

January 30, 2003

/s/ DANIEL DEL ROSARIO

\_\_\_\_\_  
Daniel Del Rosario  
Chief Executive Officer

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## CERTIFICATIONS

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 annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
  - a) designed such disclosure controls and procedures 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 annual report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrants other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

January 30, 2003

/s/ SEAN T. SMITH

Sean T. Smith  
Chief Financial Officer

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## EXHIBITS INDEX

**Exhibit  
Number Description**

- |      |  |
|------|--|
| 3.1  | Certificate of Incorporation. (1)  |
| 3.2  | Amendment to Certificate of Incorporation, dated March 16, 1990. (2)   |
| 3.3  | Amendment to Certificate of Incorporation, dated March 16, 1995. (6)   |
| 3.4  | Amendment to Certificate of Incorporation, dated November 13, 1997. (9)  |
| 3.5  | Amendment to Certificate of Incorporation, dated April 15, 2002. (14)  |
| 3.6  | By-Laws, as amended. (1)   |
| 4.1  | Form of Stock Certificate. (1)   |
| 4.2  | Form of Indenture between the Company and The Bank of Nova Scotia Trust Company of New York, as Trustee, relating to the 4.75% Convertible Subordinated Notes due December 15, 2006. (12)  |
| 4.3  | Registration Rights Agreement, dated December 12, 2001 between the Company, Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner and Smith. (12)                            |
| 4.4  | Form of Indenture between The Chase Manhattan Bank, as Trustee, and the Company relating to the 6% Convertible Subordinated Notes due June 1, 2004. (8)                                    |
| 4.5  | Registration Rights Agreement dated April 4, 2002 between the Company and Photo (L) Limited, Mask (L) Limited, Lakeway (L) Limited, and March (L) Limited. (11)                            |
| 10.1 | Credit Agreement dated as of July 12, 2002 among Photronics, Inc., JP Morgan Chase Bank, HSBC Bank USA, The Bank of New York, Fleet National Bank and Citizens Bank of Massachusetts. (13) |

- 10.2 Master Service Agreement dated January 11, 2002 between the Company and RagingWire Telecommunications, Inc.\*
- 10.3 Real Estate Agreement dated June 19, 2002 between Constantine Macricostas and the Company.\*
- 10.4 Real Estate Agreement dated June 26, 2002 between George Macricostas and Stephen Macricostas and the Company.\*
- 10.5 The Company's 1992 Employee Stock Purchase Plan. (3)
- 10.6 The Company's 1994 Employee Stock Option Plan. (4) +
- 10.7 The Company's 1996 Stock Option Plan. (7) +
- 10.8 The Company's 1998 Stock Option Plan. (10) +
- 10.9 The Company's 2000 Stock Option Plan filed as Appendix A to the Company's Notice of Annual Meeting and Proxy Statement dated April 4, 2000 is incorporated herein by reference. +
- 10.10 Form of Agreement regarding Life Insurance between the Company and Mr. Macricostas. (5) +
- 10.11 The Company's 2000 Stock Plan, as amended (14). +
- 10.12 Consulting Agreement between the Company and Michael J. Yomazzo, dated October 10, 1997. (9)+
- 10.13 Consulting Agreement between the Company and Constantine S. Macricostas, dated October 10, 1997. (9) +

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10.14 Pull/Call Option Agreement dated August 21, 2001, by and among Photronics, Inc., Photo (L) Limited, Mask (L) Limited, Lakeway (L) Limited, The HSBC Private Equity Fund 2 Limited, The HSBC Private Equity Fund, L.P., Taiwan Mask Corp. and Blue Water Ventures International Ltd. filed as Exhibit 10 to the Company's quarterly report on Form 10-Q for the quarter ended July 31, 2001 is incorporated herein by reference.

21 List of Subsidiaries. \*

23 Consent of Deloitte & Touche LLP. \*

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

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

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\* Filed herewith.

+ Represents a management contract or compensatory plan or arrangement.

(1) Filed as an exhibit 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, and incorporated herein by reference.

(2) Filed as an exhibit to the Company's Registration Statement on Form S-2, File Number 33-34772 which was declared effective by the Commission on June 22, 1990, and incorporated herein by reference.

(3) Filed as an exhibit to the Company's Registration Statement on Form S-8, File Number 33-47446, which was filed on April 24, 1992, and incorporated herein by reference.

(4) Filed as an exhibit to the Company's Registration Statement on Form S-8, File Number 33-78102, which was filed on April 22, 1994, and incorporated herein by reference.

(5) Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended July 31, 1995, and incorporated herein by reference.

(6) Filed as an exhibit to the Company's Current Report on Form 8-K, dated March 24, 1995, and incorporated herein by reference.

(7) Filed as an exhibit to the Company's Registration Statement on Form S-8, File Number 333-02245, which was filed on April 4, 1996, and incorporated herein by reference.

(8) Filed as an exhibit to the Company's Registration Statement on Form S-8, File Number 333-26009, which was declared effective by the Commission on May 22, 1997, and incorporated herein by reference.

(9) Filed as an exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended November 2, 1997, and incorporated herein by reference.

(10) Filed as an exhibit to the Company's Registration Statement on Form S-8, File Number 333-50809, which was filed on April 23, 1998, and incorporated herein by reference.

(11) Filed as an exhibit to the Company's Registration Statement on Form S-3, File Number 333-88122 which was filed on May 13, 2002, and incorporated herein by reference.

- (12) Filed as an exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended October 31, 2001, and incorporated herein by reference.
- (13) Filed as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended July 31, 2002, and incorporated herein by reference.
- (14) Filed as an exhibit to the Company's Registration Statement on Form S-8, File Number 333-86846, which was filed on April 24, 2002, and incorporated herein by reference.

**COPIES OF EXHIBITS WILL BE PROVIDED TO SHAREHOLDERS UPON REQUEST.**

## EXHIBIT 10.2

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 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 in 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 harrasment, 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.

<p><b>PHOTRONICS, INC.:</b></p> <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>_____</p> <p>Facsimile: _____</p> <p>E-Mail Address: _____</p> <p>Date: _____</p>	<p><b>RAGINGWIRE TELECOMMUNICATIONS, INC.:</b></p> <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>_____</p> <p>Facsimile: _____</p> <p>E-Mail Address: _____</p> <p>Date: _____</p>
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**Exhibit A**

Basic Managed Services	NRC	MRC

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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**REAL ESTATE AGREEMENT**

AGREEMENT made as of this 19th day of June, 2002, by and between **CONSTANTINE MACRICOSTAS**, an individual having an address at c/o Photronics, 6 Fairfield Drive, Brookfield, Connecticut 06804 (hereinafter referred to as the "Seller") and **PHOTRONICS, INC.**, a Connecticut corporation with an office and place of business at 15 Secor Road, Brookfield, Connecticut 06804 (hereinafter referred to as the "Buyer")

**WITNESSETH:**

1. **PROPERTY.** The Seller hereby agrees to sell and convey, and the Buyer hereby agrees to purchase the real property and improvements known as 5 Fairfield Drive, 10 Fairfield Drive, and 17 Secor Road, in the Town of Brookfield, County of Fairfield, and State of Connecticut, hereinafter also referred to as the "Premises", specifically described in **Schedule A** annexed hereto and made a part hereof, together with and subject to all easements, rights-of-way, privileges and appurtenances thereto, all as shown on Schedule A together with any strips, gores and other rights pertaining to the Premises and all right, title and interest of the Seller, if any, in and to any stream or body of water, bounding said Premises, and all of the Seller's right, title and interest, if any, in the bed of any abandoned street or road in front of or adjoining the Premises. Seller hereby represents and covenants that it is the sole record-owner in fee simple of the Premises.

2. **PURCHASE PRICE.** The purchase price is FIVE HUNDRED AND THIRTY THOUSAND AND NO/100 DOLLARS (\$530,000.00), allocated \$190,000.00 to 5 Fairfield Drive, \$200,000.00 to 10 Fairfield Drive, and \$140,000.00 to 17 Secor Road, which the Buyer agrees to pay as follows:

(a) Cash or check drawn on a Connecticut bank reasonably acceptable to Seller, payable to the Seller upon the signing of this Agreement; \$0.00

(b) In cash or by unendorsed certified check or unendorsed bank or cashier's check drawn on a Connecticut bank reasonably acceptable to Seller, or by wire transfer of immediately available funds, and payable directly to the order of Seller or to such person or entity or persons or entities as Seller, or to such account as Seller, may designate in writing, or any combination hereinabove described, at the time of closing; \$530,000.00

Total \$530,000.00

3. **VACANT LAND.** The subject property is comprised of 3 parcels of property of 5.44 acres, 1.98 acres, and 2.35 acres respectively which are currently undeveloped.

4. **CLOSING AND POSSESSION.** The closing shall take place on or before thirty (30) days following satisfaction of the contingencies hereinafter set forth in section 11, at the offices of Gager & Peterson, LLP, 2 Stony Hill Road, Bethel, Connecticut, or at such other time and place as both parties agree upon in writing at which time a deed to and exclusive possession of said Premises shall be delivered to the Buyer upon payment of the aforesaid purchase price.

5. **CONVEYANCE.** The Seller shall deliver to the Buyer, at the time of closing, a deed of conveyance to the Premises, which shall be a full covenant Warranty Deed, duly executed and acknowledged, conveying a good and marketable title in fee simple in and to the Premises, free and clear of all encumbrances and exceptions, except as set forth in this Agreement. At the closing, the Seller shall deliver the amount of the Connecticut real estate conveyance taxes imposed with respect to this transaction.

6. **ADJUSTMENTS.** Property taxes and municipal assessments shall be apportioned according to local custom as of the date of closing. Should any tax or assessment be undetermined on the date of the closing of title, the last determined tax or assessment shall be used for the purposes of the apportionment, subject, however, to later readjustment if the final amount due differs substantially from the amount apportioned.

7. **TITLE EXCEPTIONS.** The Premises shall be conveyed to and accepted by the Buyer subject to:

(a) Building lines if established, zoning and building regulations, and any and all provisions of any ordinance, governmental regulation or public or private law affecting said Premises; subject to Buyer's satisfaction with the Premises' compliance with the same pursuant to the terms of Section 11 hereof.

(b) Property taxes of the Town of Brookfield on the List of 10/1/01, and any existing municipal assessments, commencing with the tax payment and/or assessment or installment thereof next due after the date of closing, which the Buyer shall by acceptance of the deed assume and agree to pay, subject to adjustment as hereinbefore stated.

(c) Any riparian rights of others in any stream or body of water adjoining or passing through said Premises.

(d) Any and all assessments which may, on or after the date hereof, be levied against or become a lien on said Premises for any municipal improvements hereafter made.

(e) Any state of facts shown on an accurate survey of the Premises.

(g) Any covenants, easements and restrictions of record which do not materially and adversely affect the use of the Premises subject to Buyer's review and approval of the same pursuant to Section 8B hereof.

(h) Those matters are set forth in **Schedule A** attached hereto and made a part hereof.

8. **TITLE.**

A. **TITLE DEFECT.** If because of a defect in the title to the Premises Seller shall be unable on the date of closing to convey title as required hereunder, the closing date shall be extended for a period of not more than thirty (30) days to permit Seller to perfect title. If at the end of said thirty (30) day period Seller, after

using its best efforts, shall not have perfected title, then the Buyer may elect to accept such title as Seller can convey upon payment of the purchase price or Buyer, on that ground, may reject acceptance of the deed of conveyance. Upon such rejection all sums paid hereunder by Buyer shall be repaid by Seller to Buyer. Upon receipt of such payment by Buyer or Buyer's attorney, this Agreement shall terminate and become null and void and the parties hereto shall be released and discharged of all further claims and obligations each to the other hereunder.

It is agreed that no matter shall be considered to be a defect in title if under applicable provisions of the Standards of Title of the Connecticut Bar Association such matter is not considered to be a defect in title without curative action or if a title insurance company licensed to do business in Connecticut will issue a commitment to provide an owner's and mortgagee's policy at standard rates without exception for such item or insuring against loss or damage arising therefrom.

**B. TITLE SEARCH AND CERTIFICATION; SURVEY.** Buyer shall procure at its expense any title search, title certification, or survey desired by it or any lender providing mortgage financing for this transaction. The Buyer shall deliver to Seller a copy of said title search or certification within thirty (30) days after the date of this Agreement and shall simultaneously give Seller written notice of any title defect or any encumbrance which is unsatisfactory to Buyer. The Buyer shall be deemed to have waived objection to any title defect not specified in such notice that is either set forth in such title search or certification, or is otherwise known to Buyer.

**9. SELLER'S AFFIDAVIT.** The Seller agrees to execute, at the time of closing of title, an affidavit (a) verifying the non-existence of mechanics' and materialmen's liens (or Waiver of Mechanic's Lien as provided in the following section), (b) verifying the non-existence of any tenants' rights, except as set forth herein, (c) verifying the non-existence of any security interests in personal property and fixtures being sold with the Premises, (d) that the Seller has no notice of any facts or circumstances not of record which could give rise to the claim of any third party to rights of adverse possession or use over the Premises or any part thereof in derogation of Seller's title, and (e) to the extent of Seller's knowledge, updating any available survey, which survey Seller agrees to provide to Buyer on or before closing.

**10. WAIVER OF MECHANIC'S LIEN.** If any work has been done or material furnished on the Premises within ninety (90) days prior to closing on behalf of Seller for which a lien could be filed, the Seller agrees to deliver to the Buyer at the closing evidence of payment of such claims or absolute waivers of mechanic's liens. Failure to do so shall constitute a representation that no such work has been done nor any materials furnished.

**11. CONTINGENCIES.** Buyer's obligations hereunder shall be contingent upon satisfaction of the following contingencies:

**A. Environmental Contingency.** Buyer shall be entitled at its option and at its sole expense to conduct an environmental investigation of the Premises for the purposes of verifying the absence of hazardous waste on the Premises at levels above those allowed under applicable state and Federal law. If Buyer's inspection of the Premises reveals levels of hazardous waste above those allowed, it shall so notify the Seller or Seller's attorney in writing on or before five (5) business days from May 1, 2002 (the "Environmental Contingency Date"), whereupon (subject to the terms of Section 11C hereof) this Agreement shall terminate, all deposit monies shall be refunded to Buyer, and this Agreement shall be of no further force or effect and Seller and Buyer shall be discharged of all liability, each to the other, hereunder. Seller agrees to cooperate with Buyer in providing access to the Premises for such investigation, and Seller shall at Buyer's request execute and deliver to Buyer such evidence of Buyer's authorization to conduct such investigation as Buyer reasonably deems necessary. If Seller or Seller's attorney does not receive such written notice on or before the Environmental Contingency Date, this contingency shall be deemed to be fulfilled and this Agreement shall remain in full force and effect.

**B. Inspection Contingency.** Buyer shall be entitled at its sole expense to conduct an inspection of the Premises for the purposes of satisfying itself as to the condition of the Premises, including without limitation as to zoning matters. If Buyer's inspection of the Premises reveals conditions unsatisfactory to the Buyer in its reasonable discretion, it shall so notify the Seller or Seller's attorney in writing on or before five (5) business days from May 1, 2002 (the "Inspection Contingency Date"), whereupon (subject to the terms of Section 11C hereof) this Agreement shall terminate, all deposit monies shall be refunded to Buyer, and this Agreement shall be of no further force or effect and Seller and Buyer shall be discharged of all liability, each to the other, hereunder. Seller agrees to cooperate with Buyer in providing access to the Premises and to any surveys or reports pertaining to the Premises in Seller's possession, and Seller shall at Buyer's request execute and deliver to Buyer such evidence of Buyer's authorization to conduct such inspection as Buyer reasonably deems necessary. If Seller or Seller's attorney does not receive such written notice on or before the Inspection Contingency Date, this contingency shall be deemed to be fulfilled and this Agreement shall remain in full force and effect.

**C. Seller's Right to Cure.** Notwithstanding the foregoing, in the event that Buyer exercises its rights under any of the foregoing contingencies to terminate this Agreement, Seller shall at its option have an opportunity to cure or remedy the condition or conditions causing the failure of the contingency. If Seller desires to effectuate such a cure, it shall give written notice to Buyer of its intent to do so within five (5) business days following Buyer's notice to Seller of its intent to terminate the Agreement, and thereafter, Seller shall have a period of thirty (30) days to effectuate such cure to the Buyer's reasonable satisfaction. If at the end of such thirty (30) day period, Seller has not succeeded in curing the failed contingency to the Buyer's reasonable satisfaction, all deposit monies shall be refunded to Buyer, and this Agreement shall be of no further force and effect and Seller and Buyer shall be discharged of all liability, each to the other, hereunder.

**D. Access To Premises.** The Buyer, its employees and agents, at the Buyer's sole cost and expense, shall have the right to enter upon the Premises from time to time prior to the closing date for the purpose of fulfilling the contingencies set forth in Sections 11A and 11B above. The Buyer shall give the Seller prior notice of its entry upon the Premises and shall coordinate such entry and inspections with the Seller so that the entry is at a mutually convenient time. The Buyer shall upon request provide certificates of insurance to the Seller evidencing liability insurance in the minimum amount of \$1,000,000 combined per occurrence limit carried by the Buyer and/or the Buyer's agents in order to insure any loss arising out of or in connection with entry upon the Premises. The aforesaid insurance shall be issued by an insurance company licensed in the State of Connecticut and said insurance company shall be acceptable to the Seller. Upon completion of any inspections, the Buyer shall restore the Premises to the condition in which it existed prior to said inspections. The Buyer shall and hereby does indemnify, defend, and save harmless the Seller from and against any and all claims arising out of the entry on and inspection of the Premises by the Buyer and/or the Buyer's employees and agents, including, without limitation, the Seller's attorneys' fees and costs. Notwithstanding anything contained in this Agreement to the contrary, the terms of this paragraph shall survive (i) closing and the delivery of the deed; and (ii) the termination of this Agreement.

**12. RISK OF LOSS.** If a condemnation proceeding is instituted against the Premises or any portion thereof, or if all or a portion of the Premises is substantially damaged by fire or other casualty, prior to closing, and if the Seller does not at its option agree to repair or replace any such loss or damage, the Buyer may terminate this Agreement upon written notice to the Seller, whereupon the Seller shall return the deposit monies to the Buyer and the parties shall have no further liabilities or obligations hereunder. If the Buyer does not so terminate this Agreement, this Agreement shall continue to be effective, and the Seller shall assign to the Buyer at closing all of the Seller's right to receive any award for such condemnation or insurance proceeds as a result of such damage (as the case may be), together with all of the Seller's rights to litigate such claim and to negotiate a settlement with the condemning authority or the insurance carrier.

**13. DEFAULTS.**

A. If the Seller materially breaches this Agreement prior to closing, the sole liability of the Seller shall be (and the remedies of the Buyer shall be limited to) either, at the option of the Buyer, (i) the return by the Seller of the Buyer of the deposit monies (in which case this Agreement shall become null and void, and the parties shall have no further liabilities or obligations hereunder), or (ii) a suit by the Buyer against the Seller for specific performance only.

B. If the Buyer materially breaches this Agreement prior to closing, the deposit monies shall be paid in full to the Seller either, at the option of the Seller, (i) as liquidated damages for such breach, in which event this Agreement shall become null and void, and the parties shall have no further liabilities or obligations hereunder; or (ii) as monies to be applied to the Seller's damages to be sought by Seller in a suit against Buyer.

14. **BROKERAGE.** The Buyer represents that no agent or broker has called its attention to said Premises, showed them to it or any representative of it or in any manner dealt with it or them or been instrumental in effecting this transaction. The Buyer agrees to save the Seller harmless from any loss, expense or liability from any commission claim by any broker or agent by virtue of alleged dealings had by such claimant with the Buyer or a representative of the Buyer, provided the Buyer shall be notified immediately of any such claim and may undertake the defense thereof. The Seller represents to the Buyer that it has not entered into any listing agreement with any agent or broker which would entitle such agent or broker to a commission in connection with this transaction. The Seller agrees to save the Buyer harmless from any loss, expense or liability from any commission claim by any broker or agent by virtue of any such listing agreement.

15. **NOTICE.** All notices hereunder shall be in writing and shall be deemed to have been properly given if personally delivered or sent by private overnight express carrier, such as Federal Express, next business day delivery, charges prepaid, addressed to the addresses set forth above. Notices by the parties may be given on their behalf by their respective counsel. Notice shall be deemed to have been given upon the date of delivery, if personally delivered, or one (1) business day after the date of deposit if sent by private overnight express carrier, such as Federal Express, next business day delivery.

16. **NON-FOREIGN PERSON.** Seller represents that Seller is not a foreign person as that term is used in Section 1445(b)(2) of the Internal Revenue Code of 1954, as amended, and Seller agrees to execute an affidavit to that effect and furnish Seller's Taxpayer Identification Number on or before the closing of title.

17. **COMPLIANCE WITH IRC SECTION 6045.** Seller agrees to provide at closing such information as is necessary to complete an IRS Form 1099, including, without limitation, current address, forwarding address and taxpayer identification number.

18. **COMPLETE AGREEMENT.** It is understood and agreed that this written Agreement (including **Schedule A**, and any other schedule or schedules attached hereto) constitutes the entire contract between the parties hereto, and that no oral statements or contract promises or understanding not embodied in this writing shall be valid.

19. **SELLER'S REPRESENTATIONS AND WARRANTIES.** In consideration of the foregoing and as an inducement for Buyer to enter into this Agreement, the Seller hereby represents and warrants to the best of his knowledge and belief:

A. He has delivered to the Buyer copies of any and all environmental or engineering reports relating to the Premises which Seller has in its possession.

B. He has disclosed to Buyer any and all claims, notices of violation, orders and/or other actions, pending or threatened, which pertain to the Premises.

20. **WAIVER AND RELINQUISHMENT OF CLAIMS.** Pursuant to Sections 11A and 11B hereof, the Buyer is being afforded the opportunity to fully inspect the Premises and upon the Environmental Contingency Date and the Inspection Contingency Date (as hereinabove defined), the Buyer shall be (or shall have had the opportunity to become) thoroughly acquainted with the condition of the Premises. The Buyer acknowledges that neither the Seller nor any person acting or purporting to act for the Seller has made or now makes any representations or warranties except as expressly set forth herein, and that the Seller is unwilling to make any representations and has held out no inducements to the Buyer other than those specifically set forth herein. Without limiting the generality of the foregoing, the Buyer has not relied on any representations or warranties and, except as specifically set forth in this Agreement, the Seller has not made any representations or warranties in either case, express or implied, as to (i) the current or future assessment or valuation of the Premises; (ii) the compliance of the Premises, in its current or any future state, with applicable zoning ordinances and the ability to obtain a variance in respect to any non-compliance with said zoning ordinances; (iii) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Premises from any source, including but not limited to state, city or federal government or any institutional lender; or (iv) any other matter or thing affecting or relating to the Premises. The Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Premises or the operation, layout, expenses, condition, income, leases or rents furnished by any agent, employee, or other person, unless the same are specifically set forth herein. Subject to the provisions of Subsections 11 and 19 above, the Buyer agrees to take the Property "AS-IS", "WHERE-IS", and in its present condition, subject to reasonable use, wear and tear, and (subject to Section 12 above) due to a taking by condemnation or eminent domain, and due to natural deterioration between the date hereof and the closing. The Buyer hereby waives and relinquishes any and all claims against the Seller except as may arise from express representations. Furthermore, Buyer acknowledges and agrees that as of the closing date, it shall assume any and all obligations pertaining to the Premises, and will indemnify and hold the Seller harmless from and against any and all claims arising therefrom.

21. **SURVIVAL OF RIGHTS.** Delivery and acceptance of the deed shall constitute full compliance by the Seller with all terms, covenants, conditions and agreements contained herein or connected with this transaction, except for the warranties contained in the deed.

22. **INTERPRETATION.** Words of any gender used in this Agreement shall be deemed to include any other gender and words in the singular number shall be deemed to include the plural when the sense of the words requires the same.

23. **SUCCESSION.** This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns, and shall inure to the benefit of the Seller's successors and assigns. Notwithstanding the foregoing, this Agreement may not be assigned by Buyer without the express prior written consent of the Seller which may be withheld at Seller's discretion.

24. **EXECUTION OF AGREEMENT.** This Agreement shall not be enforceable against Seller or Buyer unless and until all parties have affixed their signatures hereto.

25. **CONFIDENTIALITY.** The Buyer agrees that any and all information obtained by the Buyer, its agents, representatives and employees, in connection with any examinations and inspections of the Premises will be held in confidence by the Buyer and its agents, representatives and employees and will not be disclosed to anyone without the prior written consent of the Seller. In the event this Agreement is terminated prior to closing, the Buyer will return to the Seller any documents and other materials received from the Seller. The Buyer shall indemnify, defend and hold the Seller harmless from any loss, damages, costs or expenses (including reasonable attorney's fees) arising as a result of the Buyer's breach of this Section 25.

26. **MISCELLANEOUS.**

A. This Agreement shall not be recorded in the land records of the Town of Brookfield or in any other office or place of public record. Any such recording without the Seller's consent shall constitute a breach of this Agreement and at Seller's option shall cause this Agreement to become immediately null and void.

B. This Agreement shall be governed and construed in accordance with the laws of the State of Connecticut.

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

D. Any and all captions used as headings for the various subject matters covered in this Agreement are used only as a matter of convenience as an aid to finding the subject matters and are not to be construed as part of this Agreement and shall not in any way limit or amplify the terms or provisions hereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, or caused the same to be signed and sealed, the day and year first above written.

SELLER:

/s/ Constantine Macricostas L.S.  
Constantine Macricostas

BUYER:  
PHOTRONICS, INC.

BY /s/ James A. Eder  
James A. Eder  
Its Vice President

#### SCHEDULE A

All those certain pieces or parcels of land, situated in the Town of Brookfield, County of Fairfield and State of Connecticut, being designated as Lots 1, 5, and 10 on a certain map entitled "Map of Property Prepared for Secor Development Co. at Brookfield, Conn., Jan. 30, 1979, revised May 15, 1979, Total Area = 27.172 Ac.", which map was prepared by and certified substantially correct by John M. Farnsworth & Associates, #3743, and which map is on file in the office of the Town Clerk of said Town of Brookfield in Map Book 15 at Page 47.

#### SUBJECT TO:

1. Taxes on the List of October 1, 2001 and thereafter, not yet due and payable.
2. Facts on Map Nos. 9-57 and 15-47.
3. Easement to Connecticut Light and Power Company recorded in Volume 131 at Page 1165, Volume 134 at Page 1003 and Volume 143 at Page 1169 of the Brookfield Land Records.
4. Easement to the Town of Brookfield recorded in Volume 135 at Pages 312 of the Brookfield Land Records (affects Lot 10 only).
5. Easement to the Town of Brookfield recorded in Volume 135 at Pages 314 of the Brookfield Land Records (affects Lots 1 and 5 only).
6. Utility Easement to Danbury and Bethel Electric Light Company dated 5-13-1940 and recorded in Volume 32 at Page 319 of the Brookfield Land Records.
7. Effect, if any, of a Utility Easement to Rocky River Realty Company dated 3-3-1954 and recorded in Volume 42 at Page 181 of the Brookfield Land Records.
8. Notice of Lease in favor of The Southern New England Telephone Company dated February 1, 1986 and recorded October 1, 1987 in Volume 203, Page 774 of the Brookfield Land Records (Lot 10 only).



**REAL ESTATE AGREEMENT**

AGREEMENT made as of this 26<sup>TH</sup> day of June, 2002, by and between **GEORGE MACRICOSTAS** and **STEPHEN MACRICOSTAS**, AS TENANTS IN COMMON, both c/o Fred L. Baker, Esq., 24 Delay Street, Danbury, CT 06810 (hereinafter collectively referred to as the "Seller") and **PHOTRONICS, INC.**, a Connecticut corporation with an office and place of business at 15 Secor Road, Brookfield, Connecticut 06804 (hereinafter referred to as the "Buyer")

**WITNESSETH:**

1. **PROPERTY.** The Seller hereby agrees to sell and convey, and the Buyer hereby agrees to purchase the real property and improvements known as 6 Fairfield Drive, in the Town of Brookfield, County of Fairfield, and State of Connecticut, hereinafter also referred to as the "Premises", specifically described in **Schedule A** annexed hereto and made a part hereof, together with and subject to all easements, rights-of-way, privileges and appurtenances thereto, all as shown on Schedule A together with any strips, gores and other rights pertaining to the Premises and all right, title and interest of the Seller, if any, in and to any stream or body of water, bounding said Premises, and all of the Seller's right, title and interest, if any, in the bed of any abandoned street or road in front of or adjoining the Premises. Seller hereby represents and covenants that it is the sole record-owner in fee simple of the Premises.

2. **PURCHASE PRICE.** The purchase price is TWO MILLION, TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,200,000.00), which the Buyer agrees to pay as follows:

- (a) Cash or check drawn on a Connecticut bank reasonably acceptable to Seller, payable to the Seller upon the signing of this Agreement; \$0.00
  - (b) In cash or by unendorsed certified check or unendorsed bank or cashier's check drawn on a Connecticut bank reasonably acceptable to Seller, or by wire transfer of immediately available funds, and payable directly to the order of Seller or to such person or entity or persons or entities as Seller, or to such account as Seller, may designate in writing, or any combination hereinabove described, at the time of closing; \$2,200,000.00
- Total \$2,200,000.00

3. **FIXTURES.** Included in this sale for the aforesaid purchase price are all buildings, fixtures and improvements attached to or appurtenant to or used in connection with the Premises, excepting therefrom all personal property and fixtures owned by tenants at the Premises.

4. **CLOSING AND POSSESSION.** The closing shall take place on or before June 30, 2002, at the offices of Gager & Peterson, LLP, 2 Stony Hill Road, Bethel, Connecticut, at which time a deed to and exclusive possession of said Premises shall be delivered to the Buyer upon payment of the aforesaid purchase price.

5. **CONVEYANCE.** The Seller shall deliver to the Buyer, at the time of closing, a deed of conveyance to the Premises, which shall be a full covenant Warranty Deed, duly executed and acknowledged, conveying a good and marketable title in fee simple in and to the Premises, free and clear of all encumbrances and exceptions, except as set forth in this Agreement. At the closing, the Seller shall deliver the amount of the Connecticut real estate conveyance taxes imposed with respect to this transaction.

6. **ADJUSTMENTS.** Property taxes and municipal assessments shall be apportioned according to local custom as of the date of closing. Water charges, fuel value, and rents, if any, shall also be adjusted as of said date. Should any tax or assessment be undetermined on the date of the closing of title, the last determined tax or assessment shall be used for the purposes of the apportionment, subject, however, to later readjustment if the final amount due differs substantially from the amount apportioned.

7. **TITLE EXCEPTIONS.** The Premises shall be conveyed to and accepted by the Buyer subject to:

- (a) Building lines if established, zoning and building regulations, and any and all provisions of any ordinance, governmental regulation or public or private law affecting said Premises; subject to Buyer's satisfaction with the Premises' compliance with the same pursuant to the terms of Section 11 hereof.
- (b) Property taxes of the Town of Brookfield on the List of 10/1/01, and any existing municipal assessments, commencing with the tax payment and/or assessment or installment thereof next due after the date of closing, which the Buyer shall by acceptance of the deed assume and agree to pay, subject to adjustment as hereinbefore stated.
- (c) Any riparian rights of others in any stream or body of water adjoining or passing through said Premises.
- (d) Any and all assessments which may, on or after the date hereof, be levied against or become a lien on said Premises for any municipal improvements hereafter made.
- (e) Any state of facts shown on an accurate survey of the Premises.
- (g) Any covenants, easements and restrictions of record which do not materially and adversely affect the use of the Premises subject to Buyer's review and approval of the same pursuant to Section 8B hereof.
- (h) Those matters are set forth in **Schedule A** attached hereto and made a part hereof.

8. **TITLE.**

A. **TITLE DEFECT.** If because of a defect in the title to the Premises Seller shall be unable on the date of closing to convey title as required hereunder, the closing date shall be extended for a period of not more than thirty (30) days to permit Seller to perfect title. If at the end of said thirty (30) day period Seller, after using its best efforts, shall not have perfected title, then the Buyer may elect to accept such title as Seller can convey upon payment of the purchase price or Buyer, on that ground, may reject acceptance of the deed of conveyance. Upon such rejection all sums paid hereunder by Buyer shall be repaid by Seller to Buyer. Upon receipt of such payment by Buyer or Buyer's attorney, this Agreement shall terminate and become null and void and the parties hereto shall be released and discharged of all further claims and obligations each to the other hereunder.

It is agreed that no matter shall be considered to be a defect in title if under applicable provisions of the Standards of Title of the Connecticut Bar Association such matter is not considered to be a defect in title without curative action or if a title insurance company licensed to do business in Connecticut will issue a commitment to provide an owner's and mortgagee's policy at standard rates without exception for such item or insuring against loss or damage arising therefrom.

B. **TITLE SEARCH AND CERTIFICATION; SURVEY.** Buyer shall procure at its expense any title search, title certification, or survey desired by it or any lender providing mortgage financing for this transaction. The Buyer shall deliver to Seller a copy of said title search or certification within thirty (30) days after the date of this Agreement and shall simultaneously give Seller written notice of any title defect or any encumbrance which is unsatisfactory to Buyer. The Buyer shall be deemed to have waived objection to any title defect not specified in such notice that is either set forth in such title search or certification, or is otherwise known to Buyer.

9. **SELLER'S AFFIDAVIT.** The Seller agrees to execute, at the time of closing of title, an affidavit (a) verifying the non-existence of mechanics' and materialmen's liens (or Waiver of Mechanic's Lien as provided in the following section), (b) verifying the non-existence of any tenants' rights, except as set forth herein, (c) verifying the non-existence of any security interests in personal property and fixtures being sold with the Premises, (d) that the Seller has no notice of any facts or circumstances not of record which could give rise to the claim of any third party to rights of adverse possession or use over the Premises or any part thereof in derogation of Seller's title, and (e) to the extent of Seller's knowledge, updating any available survey, which survey Seller agrees to provide to Buyer on or before closing.

10. **WAIVER OF MECHANIC'S LIEN.** If any work has been done or material furnished on the Premises within ninety (90) days prior to closing on behalf of Seller for which a lien could be filed, the Seller agrees to deliver to the Buyer at the closing evidence of payment of such claims or absolute waivers of mechanic's liens. Failure to do so shall constitute a representation that no such work has been done nor any materials furnished.

11. **TAX DEFERRED EXCHANGE.** Buyer hereby acknowledges that it is the intention of one or both of the Sellers to complete an I.R.C. Section 1031 exchange in a manner which will not delay the closing or cause additional expense to the Buyer. The Seller's rights and obligations under this agreement may be assigned to an Intermediary of the Seller's choice for the purpose of completing such an exchange. Buyer agrees to cooperate with the Seller and the Intermediary in the implementation of the exchange. Cooperation means that Buyer will consent to an assignment of this agreement by Seller to the Intermediary, agree to release the Intermediary from any claim made by Buyer, and agree to any other appropriate action or execution of any other document which does not create additional liability or expense, but such cooperation shall not require Buyer to take title to any other property or to assume additional liabilities.

12. **RISK OF LOSS.** If a condemnation proceeding is instituted against the Premises or any portion thereof, or if all or a portion of the Premises is substantially damaged by fire or other casualty, prior to closing, and if the Seller does not at its option agree to repair or replace any such loss or damage, the Buyer may terminate this Agreement upon written notice to the Seller, whereupon the Seller shall return the deposit monies to the Buyer and the parties shall have no further liabilities or obligations hereunder. If the Buyer does not so terminate this Agreement, this Agreement shall continue to be effective, and the Seller shall assign to the Buyer at closing all of the Seller's right to receive any award for such condemnation or insurance proceeds as a result of such damage (as the case may be), together with all of the Seller's rights to litigate such claim and to negotiate a settlement with the condemning authority or the insurance carrier.

### 13. DEFAULTS.

A. If the Seller materially breaches this Agreement prior to closing, the sole liability of the Seller shall be (and the remedies of the Buyer shall be limited to) either, at the option of the Buyer, (i) the return by the Seller of the Buyer of the deposit monies (in which case this Agreement shall become null and void, and the parties shall have no further liabilities or obligations hereunder), or (ii) a suit by the Buyer against the Seller for specific performance only.

B. If the Buyer materially breaches this Agreement prior to closing, the deposit monies shall be paid in full to the Seller either, at the option of the Seller, (i) as liquidated damages for such breach, in which event this Agreement shall become null and void, and the parties shall have no further liabilities or obligations hereunder; or (ii) as monies to be applied to the Seller's damages to be sought by Seller in a suit against Buyer.

14. **BROKERAGE.** The Buyer represents that no agent or broker has called its attention to said Premises, showed them to it or any representative of it or in any manner dealt with it or them or been instrumental in effecting this transaction. The Buyer agrees to save the Seller harmless from any loss, expense or liability from any commission claim by any broker or agent by virtue of alleged dealings had by such claimant with the Buyer or a representative of the Buyer, provided the Buyer shall be notified immediately of any such claim and may undertake the defense thereof. The Seller represents to the Buyer that it has not entered into any listing agreement with any agent or broker which would entitle such agent or broker to a commission in connection with this transaction. The Seller agrees to save the Buyer harmless from any loss, expense or liability from any commission claim by any broker or agent by virtue of any such listing agreement.

15. **NOTICE.** All notices hereunder shall be in writing and shall be deemed to have been properly given if personally delivered or sent by private overnight express carrier, such as Federal Express, next business day delivery, charges prepaid, addressed to the addresses set forth above. Notices by the parties may be given on their behalf by their respective counsel. Notice shall be deemed to have been given upon the date of delivery, if personally delivered, or one (1) business day after the date of deposit if sent by private overnight express carrier, such as Federal Express, next business day delivery.

16. **NON-FOREIGN PERSON.** Seller represents that Seller is not a foreign person as that term is used in Section 1445(b)(2) of the Internal Revenue Code of 1954, as amended, and Seller agrees to execute an affidavit to that effect and furnish Seller's Taxpayer Identification Number on or before the closing of title.

17. **COMPLIANCE WITH IRC SECTION 6045.** Seller agrees to provide at closing such information as is necessary to complete an IRS Form 1099, including, without limitation, current address, forwarding address and taxpayer identification number.

18. **COMPLETE AGREEMENT.** It is understood and agreed that this written Agreement (including **Schedule A**, and any other schedule or schedules attached hereto) constitutes the entire contract between the parties hereto, and that no oral statements or contract promises or understanding not embodied in this writing shall be valid.

19. **SELLER'S REPRESENTATIONS AND WARRANTIES.** In consideration of the foregoing and as an inducement for Buyer to enter into this Agreement, the Seller hereby represents and warrants to the best of its knowledge and belief:

A. It has delivered to the Buyer copies of any and all environmental or engineering reports relating to the Premises which Seller has in its possession.

B. It has disclosed to Buyer any and all claims, notices of violation, orders and/or other actions, pending or threatened, which pertain to the Premises.

20. **WAIVER AND RELINQUISHMENT OF CLAIMS.** The Buyer has inspected the Premises and become thoroughly acquainted with the condition of the Premises. The Buyer acknowledges that neither the Seller nor any person acting or purporting to act for the Seller has made or now makes any representations or warranties except as expressly set forth herein, and that the Seller is unwilling to make any representations and has held out no inducements to the Buyer other than those specifically set forth herein. Without limiting the generality of the foregoing, the Buyer has not relied on any representations or warranties and, except as specifically set forth in this Agreement, the Seller has not made any representations or warranties in either case, express or implied, as to (i) the current or future assessment or valuation of the Premises; (ii) the compliance of the Premises, in its current or any future state, with applicable zoning ordinances and the ability to obtain a variance in respect to any non-compliance with said zoning ordinances; (iii) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Premises from any source, including but not limited to state, city or federal government or any institutional lender; or (iv) any other matter or thing affecting or relating to the Premises. The Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Premises or the operation, layout, expenses, condition, income, leases or rents furnished by any agent, employee, or other person, unless the same are specifically set forth herein. Subject to the provisions of Subsection 19 above, the Buyer agrees to take the Property "AS-IS", "WHERE-IS", and in its present condition, subject to reasonable use, wear and tear, and (subject to Section 12 above) due to a taking by condemnation or eminent domain, and due to natural deterioration between the date hereof and the closing. The Buyer hereby waives and relinquishes any and all claims against the Seller except as may arise from express representations. Furthermore, Buyer acknowledges and agrees that as of the closing date, it shall assume any and all obligations pertaining to the Premises, and will indemnify and hold the Seller harmless from and against any and all claims arising therefrom.

21. **SURVIVAL OF RIGHTS.** Delivery and acceptance of the deed shall constitute full compliance by the Seller with all terms, covenants, conditions and agreements contained herein or connected with this transaction, except for the warranties contained in the deed.

22. **INTERPRETATION.** Words of any gender used in this Agreement shall be deemed to include any other gender and words in the singular number shall be deemed to include the plural when the sense of the words requires the same.

23. **SUCCESSION.** This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns, and shall inure to the benefit of the Seller's successors and assigns. Notwithstanding the foregoing, this Agreement may not be assigned by Buyer without the express prior written consent of the Seller which may be withheld at Seller's discretion.

24. **EXECUTION OF AGREEMENT.** This Agreement shall not be enforceable against Seller or Buyer unless and until all parties have affixed their signatures hereto.

25. **CONFIDENTIALITY.** The Buyer agrees that any and all information obtained by the Buyer, its agents, representatives and employees, in connection with any examinations and inspections of the Premises will be held in confidence by the Buyer and its agents, representatives and employees and will not be disclosed to anyone without the prior written consent of the Seller. In the event this Agreement is terminated prior to closing, the Buyer will return to the Seller any documents and other materials received from the Seller. The Buyer shall indemnify, defend and hold the Seller harmless from any loss, damages, costs or expenses (including reasonable attorney's fees) arising as a result of the Buyer's breach of this Section 25.

26. **MISCELLANEOUS.**

A. This Agreement shall not be recorded in the land records of the Town of Brookfield or in any other office or place of public record. Any such recording without the Seller's consent shall constitute a breach of this Agreement and at Seller's option shall cause this Agreement to become immediately null and void.

B. This Agreement shall be governed and construed in accordance with the laws of the State of Connecticut.

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

D. Any and all captions used as headings for the various subject matters covered in this Agreement are used only as a matter of convenience as an aid to finding the subject matters and are not to be construed as part of this Agreement and shall not in any way limit or amplify the terms or provisions hereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, or caused the same to be signed and sealed, the day and year first above written.

SELLER:

/s/ George Macricostas L.S.  
George Macricostas

/s/ Stephen Macricostas L.S.  
Stephen Macricostas

BUYER:  
PHOTRONICS, INC.

BY /s/ James A. Eder  
James A. Eder  
Its Vice President

## SCHEDULE A

All those certain pieces or parcels of land, situated in the Town of Brookfield, County of Fairfield and State of Connecticut, being designated as Lot 3 on a

certain map entitled "Map of Property Prepared for Secor Development Co. at Brookfield, Conn., Jan. 30, 1979, revised May 15, 1979, Total Area = 27.172 Ac.", which map was prepared by and certified substantially correct by John M. Farnsworth & Associates, #3743, and which map is on file in the office of the Town Clerk of said Town of Brookfield in Map Book 15 at Page 47.

SUBJECT TO:

1. Taxes on the List of October 1, 2001 and thereafter, not yet due and payable.
2. Facts on Map Nos. 9-57 and 15-47.
3. Easement to Connecticut Light and Power Company recorded in Volume 166 at Page 179 of the Brookfield Land Records.
4. Variance granted by the Town of Brookfield recorded 9-15-1998 in Volume 341 at Page 761 of the Brookfield Land Records.
5. Easement to The Danbury and Bethel Gas & Electric Light Company dated 5-13-1940 and recorded in Volume 32 at Page 319 of the Brookfield Land Records.
6. Effect, if any, of an easement and right of way to The Rocky River Realty Company dated 3-3-1954 and recorded in Volume 42 at Page 181 of the Brookfield Land Records.
7. An easement in favor of the Town of Brookfield dated 7-16-1980 and recorded in Volume 136 at Page 841 of the Brookfield Land Records.

**EXHIBIT 21****List of Significant Subsidiaries****State of Incorporation or Jurisdiction**  
*(100% owned unless otherwise indicated)*

Photronics Arizona, Inc.	Florida
Photronics California, Inc.	California
PLI Management Corporation	Florida
Photronics Investment Services, Inc.	Nevada
Photronics Texas I, L.P.	Texas
Photronics Texas II, L.P.	Texas
Photronics (UK) Limited	England
Photronics Germany GmbH	Germany
Photronics MZD GmbH & Co. KG	Germany
Photronics MZD Verwaltungs GmbH	Germany
PKL Ltd. (78.8% owned)	Korea
Photronics Singapore Pte. Ltd.	Singapore
Photronics Services, S.A.	Switzerland
Precision Semiconductor Mask Corporation (57.76% Owned)	Taiwan
Photronics Imaging Technologies (Shanghai) Co. Ltd.	China

**Independent Auditors' Consent**

We consent to the incorporation by reference in Registration Statements Nos. 333-02245, 333-42010, 333-50809, 333-86846, 33-17530, 33-28118 and 33-78102 on Form S-8 and Registration Statement Nos. 333-26009 and 333-88122 on Form S-3 of Photronics, Inc. of our report dated December 6, 2002 appearing in this Annual Report on Form 10-K of Photronics, Inc. for the year ended November 3, 2002.

/s/ Deloitte & Touche LLP  
Hartford, Connecticut  
January 30, 2003

**EXHIBIT 99.1**

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Daniel Del Rosario, 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 fiscal year ended November 3, 2002 (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.

Dated: January 30, 2003

/s/ DANIEL DEL ROSARIO

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Daniel Del Rosario  
Chief Executive Officer

**EXHIBIT 99.2**

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Sean T. Smith, Chief Financial Officer of Photronics, 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 fiscal year ended November 3, 2002 (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.

Dated: January 30, 2003

/s/ SEAN T. SMITH

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Sean T. Smith  
Chief Financial Officer



