SUBURBAN PROPANE PARTNERS LP
Form 10-Q
May 10, 2007

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended March 31, 2007

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
Commission File Number: 1-14222

SUBURBAN PROPANE PARTNERS, L.P.

(Exact name of registrant as specified in its charter)

Delaware	22-3410353
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

240 Route 10 West
Whippany, NJ 07981
(973) 887-5300

(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of ''accelerated filer and large accelerated filer'' in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

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

SUBURBAN PROPANE PARTNERS, L.P. AND SUBSIDIARIES

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DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements (‘‘Forward-Looking Statements’’) as defined in the Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act of 1933, as amended, relating to future business expectations and predictions and financial condition and results of operations of Suburban Propane Partners, L.P. (the ‘‘Partnership’’). Some of these statements can be identified by the use of forward-looking terminology such as ‘‘prospects,’’ ‘‘outlook,’’ ‘‘believes,’’ ‘‘estimates,’’ ‘‘intends,’’ ‘‘may,’’ ‘‘will,’’ ‘‘should,’’ ‘‘anticipates, the negative or other variation of these or similar words, or by discussion of trends and conditions, strategies or risks and uncertainties. These Forward-Looking Statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those discussed or implied in such Forward-Looking Statements (statements contained in this Quarterly Report identifying such risks and uncertainties are referred to as ‘‘Cautionary Statements’’). The risks and uncertainties and their impact on the Partnership's results include, but are not limited to, the following risks:

- The impact of weather conditions on the demand for propane, fuel oil and other refined fuels, natural gas and electricity;

- Fluctuations in the unit cost of propane, fuel oil and other refined fuels and natural gas, and the impact of price increases on customer conservation;
- The ability of the Partnership to compete with other suppliers of propane, fuel oil and other energy sources;
- The impact on the price and supply of propane, fuel oil and other refined fuels from the political, military or economic instability of the oil producing nations, global terrorism and other general economic conditions;
- The ability of the Partnership to acquire and maintain reliable transportation for its propane, fuel oil and other refined fuels;
- The ability of the Partnership to retain customers;
- The impact of energy efficiency and technology advances on the demand for propane and fuel oil;
- The ability of management to continue to control expenses including the results of our field and HVAC realignment initiative;
- The impact of changes in applicable statutes and government regulations, or their interpretations, including those relating to the environment and global warming and other regulatory developments on the Partnership's business;
- The impact of legal proceedings on the Partnership's business;
- The impact of operating hazards that could adversely affect the Partnership's operating results to the extent not covered by insurance; and
- The Partnership's ability to integrate acquired businesses successfully.

Some of these Forward-Looking Statements are discussed in more detail in ''Management's Discussion and Analysis of Financial Condition and Results of Operations'' in this Quarterly Report. Reference is also made to the risk factors discussed in Item 1A of our Annual Report on Form 10-K for the fiscal year ended September 30, 2006. On different occasions, the Partnership or its representatives have made or may make Forward-Looking Statements in other filings with the Securities and Exchange Commission (''SEC''), press releases or oral statements made by or with the approval of one of the Partnership's authorized executive officers. Readers are cautioned not to place undue reliance on Forward-Looking Statements, which reflect management's view only as of the date made. The Partnership undertakes no obligation to update any Forward-Looking Statement or Cautionary Statement. All subsequent written and oral Forward-Looking Statements attributable to the Partnership or persons acting on its behalf are expressly qualified in their entirety by the Cautionary Statements in this Quarterly Report and in future SEC reports.

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SUBURBAN PROPANE PARTNERS, L.P. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands)
(unaudited)

	March 31, 2007	September 30, 2006
ASSETS		
Current assets:		

Cash and cash equivalents	$ 88,986	$ 60,571
Accounts receivable, less allowance for doubtful accounts of $6,134 and $5,530, respectively	157,686	78,547
Inventories	65,488	79,418
Prepaid expenses and other current assets	28,379	16,815
Total current assets	340,539	235,351
Property, plant and equipment, net	386,314	390,383
Goodwill	281,359	281,359
Other intangible assets, net	19,405	18,098
Other assets	28,418	28,695
Total assets	$ 1,056,035	$ 953,886
LIABILITIES AND PARTNERS' CAPITAL		
Current liabilities:		
Accounts payable	$ 71,794	$ 57,372
Accrued employment and benefit costs	37,372	35,510
Accrued insurance	16,960	7,360
Customer deposits and advances	26,417	62,630
Accrued interest	8,368	8,371
Other current liabilities	15,000	21,373
Total current liabilities	175,911	192,616
Long-term borrowings	548,421	548,304
Postretirement benefits obligation	26,947	27,759
Accrued insurance	35,912	38,053
Accrued pension liability	33,038	31,086
Other liabilities	16,169	15,367
Total liabilities	836,398	853,185
Commitments and contingencies		
Partners' capital:		
Common Unitholders (32,674 and 30,314 units issued and outstanding at March 31, 2007 and September 30, 2006, respectively)	285,755	170,151
General Partner	—	(1,969)
Deferred compensation	(5,660)	(5,704)
Common Units held in trust, at cost	5,660	5,704
Accumulated other comprehensive loss	(66,118)	(67,481)
Total partners' capital	219,637	100,701
Total liabilities and partners' capital	$ 1,056,035	$ 953,886

The accompanying notes are an integral part of these condensed consolidated financial statements.

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SUBURBAN PROPANE PARTNERS, L.P. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per unit amounts)
(unaudited)

	Three Months Ended	
	March 31, 2007	March 25, 2006
Revenues		
Propane	$ 392,243	$ 386,610
Fuel oil and refined fuels	111,215	133,567
Natural gas and electricity	36,455	46,111
HVAC	14,671	22,416
All other	1,534	2,239
	556,118	590,943
Costs and expenses		
Cost of products sold	327,347	368,856
Operating	88,848	99,527
General and administrative	15,693	17,114
Restructuring and other costs	1,100	1,497
Depreciation and amortization	7,570	8,898
	440,558	495,892
Income before interest expense and provision for income taxes	115,560	95,051
Interest expense, net	9,322	10,939
Income before provision for income taxes	106,238	84,112
Provision for income taxes	378	83
Net income	$ 105,860	$ 84,029
General Partner's interest in net income	—	2,715
Limited Partners' interest in net income	$ 105,860	$ 81,314
Net income per Common Unit – basic	$ 3.24	$ 2.44
Weighted average number of Common Units outstanding – basic	32,673	30,313
Net income per Common Unit – diluted	$ 3.22	$ 2.43
Weighted average number of Common Units outstanding – diluted	32,844	30,438

The accompanying notes are an integral part of these condensed consolidated financial statements.

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SUBURBAN PROPANE PARTNERS, L.P. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per unit amounts)
(unaudited)

	Six Months Ended	
	March 31, 2007	March 25, 2006

Revenues		
Propane	$ 679,122	$ 696,902
Fuel oil and refined fuels	180,085	238,872
Natural gas and electricity	59,200	84,054
HVAC	33,130	53,643
All other	3,568	4,935
	955,105	1,078,406
Costs and expenses		
Cost of products sold	558,221	684,699
Operating	172,908	199,788
General and administrative	28,595	31,330
Restructuring and other costs	1,485	1,497
Depreciation and amortization	14,706	17,109
	775,915	934,423
Income before interest expense and provision for income taxes	179,190	143,983
Interest expense, net	18,538	21,506
Income before provision for income taxes	160,652	122,477
Provision for income taxes	1,140	233
Income from continuing operations	159,512	122,244
Discontinued operations:		
Gain on exchange of customer service centers (Note 6)	1,002	—
Net income	$ 160,514	$ 122,244
General Partner’s interest in net income	—	3,902
Limited Partners’ interest in net income	$ 160,514	$ 118,342
Income per Common Unit – basic		
Income from continuing operations	$ 4.92	$ 3.59
Discontinued operations	0.03	—
Net income	$ 4.95	$ 3.59
Weighted average number of Common Units outstanding – basic	32,433	30,306
Income per Common Unit – diluted		
Income from continuing operations	$ 4.90	$ 3.58
Discontinued operations	0.03	—
Net income	$ 4.93	$ 3.58
Weighted average number of Common Units outstanding – diluted	32,585	30,416

The accompanying notes are an integral part of these condensed consolidated financial statements.

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SUBURBAN PROPANE PARTNERS, L.P. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Six Months Ended March 31, 2007	Six Months Ended March 25, 2006
Cash flows from operating activities:		
Net income	$ 160,514	$ 122,244
Adjustments to reconcile net income to net cash provided by operations:		
Depreciation expense	13,626	15,595
Amortization of intangible assets	1,080	1,514
Amortization of debt origination costs	664	660
Compensation cost recognized under Restricted Unit Plan	1,160	1,176
Amortization of discount on long-term borrowings	117	117
Gain on exchange of customer service centers	(1,002)	—
Gain on disposal of property, plant and equipment, net	(2,062)	(621)
Changes in assets and liabilities:		
(Increase) in accounts receivable	(79,259)	(77,068)
Decrease in inventories	13,939	4,037
(Increase)/decrease in prepaid expenses and other current assets	(12,216)	11,419
Increase in accounts payable	14,348	6,355
Increase in accrued employment and benefit costs	1,862	5,816
(Decrease)/increase in accrued interest	(3)	777
(Decrease) in other accrued liabilities	(30,434)	(42,581)
(Increase) in other noncurrent assets	(908)	(2,786)
(Decrease)/increase in other noncurrent liabilities	(199)	8,182
Net cash provided by operating activities	81,227	54,836
Cash flows from investing activities:		
Capital expenditures	(13,199)	(10,866)
Proceeds from sale of property, plant and equipment	4,488	1,625
Net cash (used in) investing activities	(8,711)	(9,241)
Cash flows from financing activities:		
Repayment of short-term borrowings, net	—	(5,000)
Partnership distributions	(44,101)	(38,323)
Net cash (used in) financing activities	(44,101)	(43,323)
Net increase in cash and cash equivalents	28,415	2,272
Cash and cash equivalents at beginning of period	60,571	14,411
Cash and cash equivalents at end of period	$ 88,986	$ 16,683

The accompanying notes are an integral part of these condensed consolidated financial statements.

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SUBURBAN PROPANE PARTNERS, L.P. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENT OF PARTNERS' CAPITAL
(in thousands)
(unaudited)

	Number of Common Units	Common Unitholders	General Partner	Deferred Compensation	Common Units Held in Trust	Accumulated Other Comprehensive (Loss)	Total Partners' Capital	Comprehensive Income
Balance at September 30, 2006	30,314	$170,151	$(1,969)	$(5,704)	$5,704	$(67,481)	$100,701	
Net income		160,514					160,514	$160,514
Other comprehensive income:								
Net unrealized losses on cash flow hedges						(604)	(604)	(604)
Reclassification of realized losses on cash flow hedges into earnings						1,967	1,967	1,967
Comprehensive income								$161,877
Partnership distributions		(44,101)					(44,101)	
Common Units issued under Restricted Unit Plan	60						—	
Common Units issued in exchange of General Partner interest	2,300	80,443					80,443	
Exchange and cancellation of General Partner interest		(82,412)	1,969				(80,443)	
Common Units distributed from trust				44	(44)		—	
Compensation cost recognized under Restricted Unit Plan, net of forfeitures		1,160					1,160	
Balance at March 31, 2007	32,674	$285,755	$ —	$(5,660)	$5,660	$(66,118)	$219,637	

The accompanying notes are an integral part of these condensed consolidated financial statements.

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SUBURBAN PROPANE PARTNERS, L.P. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per unit amounts)
(unaudited)

1. Partnership Organization and Formation

Suburban Propane Partners, L.P. (the ‘‘Partnership’’) is a publicly traded Delaware limited partnership principally engaged, through its operating partnership and subsidiaries, in the retail marketing and distribution of propane, fuel oil and refined fuels, as well as the marketing of natural gas and electricity in deregulated markets. In addition, to complement its core marketing and distribution businesses, the Partnership services a wide variety of home comfort equipment, particularly for heating, ventilation and air conditioning (‘‘HVAC’’). The limited partner interests in the Partnership are evidenced by common units traded on the New York Stock Exchange (‘‘Common Units’’) with 32,674,255 Common Units outstanding at March 31, 2007. The holders of Common Units are entitled to participate in distributions and exercise the rights and privileges available to limited partners under the Third Amended and Restated Agreement of Limited Partnership (the ‘‘Partnership Agreement’’), adopted on October 19, 2006 following approval by Common Unitholders at the Partnership’s Tri-Annual Meeting. Rights and privileges under the Partnership Agreement include, among other things, the election of all members of the Board of Supervisors, and voting on the removal of the general partner.

Suburban Propane, L.P. (the ‘‘Operating Partnership’’), a Delaware limited partnership, is the Partnership’s operating subsidiary formed to operate the propane business and assets. In addition, Suburban Sales & Service, Inc. (the ‘‘Service Company’’), a subsidiary of the Operating Partnership, was formed to operate the service work and appliance and parts businesses of the Partnership. The Operating Partnership, together with its direct and indirect subsidiaries, accounts for substantially all of the Partnership’s assets, revenues and earnings. The Partnership, the Operating Partnership and the Service Company commenced operations in March 1996 in connection with the Partnership’s initial public offering.

The general partner of both the Partnership and the Operating Partnership is Suburban Energy Services Group LLC (the ‘‘General Partner’’), a Delaware limited liability company. On October 19, 2006, the Partnership consummated an agreement with its General Partner to exchange 2,300,000 newly issued Common Units for the General Partner’s incentive distribution rights (‘‘IDRs’’) and the economic interest in the Partnership and the Operating Partnership included in the general partner interests therein (the ‘‘GP Exchange Transaction’’). Prior to the GP Exchange Transaction, the General Partner was majority-owned by senior management of the Partnership and owned 224,625 general partner units (an approximate 0.74% ownership interest) in the Partnership and a 1.0101% general partner interest in the Operating Partnership. The General Partner also held all outstanding IDRs of the Partnership and appointed two of the five members of the Board of Supervisors. As a result of the GP Exchange Transaction, the General Partner has no economic interest in either the Partnership or the Operating Partnership other than as a holder of 784 Common Units that will remain in the General Partner, there are no IDRs outstanding or provided for under the Partnership Agreement and the General Partner does not have the right to appoint any members of the Board of Supervisors. The Chief Executive Officer of the Partnership serves as the sole member of the General Partner.

On January 5, 2001, Suburban Holdings, Inc., a subsidiary of the Operating Partnership, was formed to hold the stock of Gas Connection, Inc. (d/b/a HomeTown Hearth & Grill), Suburban @ Home, Inc. (‘‘Suburban @ Home’’) and

Suburban Franchising, Inc. (‘‘Suburban Franchising’’). On December 31, 2006, Suburban Holdings, Inc. and Suburban @ Home merged into the Service Company. On January 1, 2007, HomeTown Hearth & Grill and Suburban Franchising converted into single-member LLCs owned by the Service Company. HomeTown Hearth & Grill sells and installs natural gas and propane gas grills, fireplaces and related accessories and supplies. Suburban Franchising creates and develops propane related franchising business opportunities.

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On November 21, 2003, Suburban Heating Oil Partners, LLC, a subsidiary of HomeTown Hearth & Grill, was formed to acquire and operate the fuel oil and refined fuels and HVAC assets and businesses of Agway Energy acquired on December 23, 2003. In addition, Agway Energy Services, LLC, also a subsidiary of HomeTown Hearth & Grill, was formed to acquire and operate the natural gas and electricity marketing business of Agway Energy.

Suburban Energy Finance Corporation, a direct wholly-owned subsidiary of the Partnership, was formed on November 26, 2003 to serve as co-issuer, jointly and severally, with the Partnership of the Partnership’s 6.875% senior notes due in 2013 (see Note 8).

2. Basis of Presentation

Principles of Consolidation. The consolidated financial statements include the accounts of the Partnership, the Operating Partnership and all of its direct and indirect subsidiaries. All significant intercompany transactions and account balances have been eliminated. As a result of the GP Exchange Transaction, the General Partner no longer has any economic interest in the Partnership or the Operating Partnership apart from 784 Common Units held by it. The Partnership consolidates the results of operations, financial condition and cash flows of the Operating Partnership as a result of the Partnership’s 100% limited partner interest in the Operating Partnership.

The accompanying condensed consolidated financial statements are unaudited and have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission (‘‘SEC’’). They include all adjustments that the Partnership considers necessary for a fair statement of the results for the interim periods presented. Such adjustments consist only of normal recurring items, unless otherwise disclosed. These financial statements should be read in conjunction with the Partnership’s Annual Report on Form 10-K for the fiscal year ended September 30, 2006, including management’s discussion and analysis of financial condition and results of operations contained therein. Due to the seasonal nature of the Partnership’s operations, the results of operations for interim periods are not necessarily indicative of the results to be expected for a full year.

Fiscal Period. The Partnership’s fiscal periods typically end on the last Saturday of the quarter.

Derivative Instruments and Hedging Activities. The Partnership enters into a combination of exchange-traded futures and option contracts, forward contracts and, in certain instances, over-the-counter options (collectively, ‘‘derivative instruments’’) to manage the price risk associated with future purchases of the commodities used in its operations, principally propane and fuel oil, as well as to ensure supply during periods of high demand. All derivative instruments are reported on the balance sheet, within other current assets or other current liabilities, at their fair values pursuant to Statement of Financial Accounting Standards (‘‘SFAS’’) No. 133, ‘‘Accounting for Derivative Instruments and Hedging Activities,’’ as amended by SFAS Nos. 137, 138, 149 and 155 (‘‘SFAS 133’’). On the date that futures, forward and option contracts are entered into, the Partnership makes a determination as to whether the derivative instrument qualifies for designation as a hedge. Changes in the fair value of derivative instruments are recorded each period in current period earnings or other comprehensive income (loss) (‘‘OCI’’), depending on whether a derivative instrument is designated as a hedge and, if so, the type of hedge. For derivative instruments designated as cash flow hedges, the Partnership formally assesses, both at the hedge contract's inception and on an ongoing basis, whether the hedge contract is highly effective in offsetting changes in cash flows of hedged items. Changes in the fair value of derivative instruments designated as cash flow hedges are reported in OCI to the extent effective and reclassified into cost of products sold during the same period in which the hedged item affects earnings. The mark-to-market gains or losses on ineffective portions of cash flow hedges used to hedge future purchases are recognized in cost of products sold immediately. Changes in the fair value of derivative instruments that are not designated as hedges are recorded in current period earnings within cost of products sold.

A portion of the Partnership's option contracts are not classified as hedges and, as such, changes in the fair value of these derivative instruments are recognized within cost of products sold as they occur. The value of certain option contracts that do qualify as hedges and are designated as cash flow hedges under SFAS 133 have two components of value: time value and intrinsic value. The intrinsic

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value is the value by which the option is in the money (i.e., the amount by which the value of the commodity exceeds the exercise or ''strike'' price of the option). The remaining amount of option value is attributable to time value. The Partnership does not include the time value of option contracts in its assessment of hedge effectiveness and, therefore, records changes in the time value component of the options currently in earnings.

Market risks associated with the trading of futures, options and forward contracts are monitored daily for compliance with the Partnership's Hedging and Risk Management Policy which includes volume limits for open positions. Open inventory positions are also reviewed and managed daily as to exposures to changing market prices.

At March 31, 2007, the fair value of derivative instruments described above resulted in derivative assets of $1 included within prepaid expenses and other current assets and derivative liabilities of $433 included within other current liabilities. Cost of products sold included unrealized (non-cash) losses of $6,584 and $7,572 for the three and six months ended March 31, 2007, respectively, unrealized (non-cash) losses of $557 for the three months ended March 25, 2006 and unrealized (non-cash) gains of $6,485 for the six months ended March 25, 2006, attributable to the change in fair value of derivative instruments not designated as cash flow hedges.

A portion of the Partnership's long-term borrowings bear interest at a variable rate based upon either LIBOR or Wachovia National Bank's prime rate, plus an applicable margin depending on the level of the Partnership's total leverage. Therefore, the Partnership is subject to interest rate risk on the variable component of the interest rate. The Partnership manages part of its variable interest rate risk by entering into interest rate swap agreements. On March 31, 2005, the Partnership entered into a $125,000 interest rate swap contract in conjunction with the Term Loan facility under the Revolving Credit Agreement (see Note 8). The interest rate swap is being accounted for under SFAS 133 and the Partnership has designated the interest rate swap as a cash flow hedge. Changes in the fair value of the interest rate swap are recognized in OCI until the hedged item is recognized in earnings. At March 31, 2007, the fair value of the interest rate swap amounted to $661 and is included within other assets.

Use of Estimates. The preparation of financial statements in conformity with generally accepted accounting principles (''GAAP'') requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates have been made by management in the areas of depreciation and amortization of long-lived assets, insurance and litigation reserves, environmental reserves, pension and other postretirement benefit liabilities and costs, valuation of derivative instruments, asset valuation assessments, tax valuation allowances, as well as the allowance for doubtful accounts. Actual results could differ from those estimates, making it reasonably possible that a change in these estimates could occur in the near term.

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

3. Exchange of General Partner's Interests and Incentive Distribution Rights

On October 19, 2006, following approval by the requisite vote of the Common Unitholders of the Partnership at its 2006 Tri-Annual Meeting held on October 17, 2006, the Partnership consummated the GP Exchange Transaction with its General Partner for the acquisition of the General Partner's IDRs, as well as the economic interest contained in its general partnership interests in both the Partnership and the Operating Partnership, in exchange for 2,300,000 newly issued Common Units having a fair value of approximately $80,443. As a result of the GP Exchange Transaction, the excess of the fair value of the Common Units issued over the $1,969 carrying value of the General Partner interest was recorded as a reduction to the Common Unitholders interest within the condensed consolidated statement of partners' capital.

Pursuant to a Distribution, Release and Lockup Agreement by and among the Partnership, the Operating Partnership, the General Partner and the members of the General Partner, the Common

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Units were distributed to the members of the General Partner in exchange for their membership interests in the General Partner (other than 784 Common Units that will remain in the General Partner). The Common Units issued in the GP Exchange Transaction represented approximately 7% of the total number of Common Units outstanding after consummation of the GP Exchange Transaction.

4. Restructuring and Other Costs

During the fourth quarter of fiscal 2005 and throughout fiscal 2006, the Partnership approved and initiated plans of reorganization to realign the field operations in an effort to streamline the operating footprint and to leverage the system infrastructure to achieve additional operational efficiencies and reduce costs, as well as to restructure its HVAC business (collectively, the ''Restructuring''). As a result of the Restructuring, the Partnership recorded a restructuring charge of $2,150 during the fourth quarter of fiscal 2005 associated with severance and other employee benefits for approximately 85 positions eliminated and in fiscal 2006 recorded additional charges of $5,276 related to severance and other employee benefits for approximately 325 positions eliminated and $800 related to exit costs, primarily lease termination costs, associated with a plan to exit certain activities of the HomeTown Hearth & Grill business included within the all other business segment. As of March 31, 2007, the majority of severance and other benefit related payments associated with the Partnership's field and HVAC reorganization were incurred and charged against the restructuring reserve. During the three and six months ended March 31, 2007, the Partnership recorded severance charges of $1,100 and $1,485 respectively, associated with positions eliminated during fiscal 2007.

The components of the remaining restructuring charges are as follows:

	Reserve at September 30, 2006	Charges Through March 31, 2007	Utilization Through March 31, 2007	Reserve at March 31, 2007
Charges expensed:				
Severance and other employee costs	$ 1,621	$ 1,485	$ (1,886)	$ 1,220
Other exit costs	854	—	(271)	583
Total	$ 2,475	$ 1,485	$ (2,157)	$ 1,803

The remaining reserve of $1,803 as of March 31, 2007 is expected to be paid out or utilized over the next twelve months.

5. Inventories

Inventories are stated at the lower of cost or market. Cost is determined using a weighted average method for propane, fuel oil and refined fuels and natural gas, and a standard cost basis for appliances, which approximates average cost. Inventories consist of the following:

	March 31, 2007	September 30, 2006
Propane, fuel oil and refined fuels	$ 61,024	$ 72,143
Natural gas	—	1,148
Appliances and related parts	4,464	6,127
	$ 65,488	$ 79,418

6. Goodwill and Other Intangible Assets

Goodwill represents the excess of the purchase price over the fair value of net assets acquired. In accordance with SFAS No. 142, ‘‘Goodwill and Other Intangible Assets’’ (‘‘SFAS 142’’), goodwill is not amortized. Rather, goodwill is subject to an impairment review at a reporting unit level, on an annual basis in August of each year, or when an event occurs or circumstances change that would

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indicate potential impairment. The Partnership assesses the carrying value of goodwill at a reporting unit level based on an estimate of the fair value of the respective reporting unit. Fair value of the reporting unit is estimated using discounted cash flow analyses taking into consideration estimated cash flows in a ten-year projection period and a terminal value calculation at the end of the projection period.

Other intangible assets consist of the following:

	March 31, 2007	September 30, 2006
Customer lists	$ 22,316	$ 19,866
Trade names	1,499	1,499
Non-compete agreements	526	986
Other	1,967	1,967
	26,308	24,318
Less: accumulated amortization	6,903	6,220
	$ 19,405	$ 18,098

During the first quarter of fiscal 2007, in a non-cash transaction, the Partnership completed a transaction in which it disposed of nine customer service centers considered to be non-strategic in exchange for three customer service centers of another company located in Alaska. The Partnership relinquished assets with a fair value of approximately $4,000 and allocated this fair value among the assets received, including $2,450 to the customer list acquired and $1,550 to the property, plant and equipment acquired (primarily tanks and cylinders). This customer list will be amortized over a ten-year period. The Partnership reported a $1,002 gain within discontinued operations in the first quarter of fiscal 2007 for the amount by which the fair value of assets relinquished exceeded the carrying value of the assets relinquished.

Aggregate amortization expense related to other intangible assets for the three and six months ended March 31, 2007 was $544 and $1,080, respectively, and $547 and $1,514 for the three and six months ended March 25, 2006, respectively.

Aggregate amortization expense related to other intangible assets for the remainder of fiscal 2007 and for each of the five succeeding fiscal years as of March 31, 2007 is as follows: 2007 – $1,163; 2008 – $2,224; 2009 – $2,220; 2010 – $2,205; 2011 – $2,205 and 2012 – $1,730.

7. Income Per Unit

Subsequent to the GP Exchange Transaction, computations of earnings per Common Unit are performed in accordance with SFAS No. 128 ‘‘Earnings per Share’’ (‘‘SFAS 128’’). Prior to the GP Exchange Transaction, when the General Partner owned IDRs in the Partnership, computations of earnings per Common Unit were performed in accordance with Emerging Issues Task Force (‘‘EITF’’) consensus 03-6 ‘‘Participating Securities and the Two-Class Method Under FAS 128’’ (‘‘EITF 03-6’’), when applicable. EITF 03-6 requires, among other things, the use of the two-class method of computing earnings per unit when participating securities exist. The two-class method is an earnings allocation formula that computes earnings per unit for each class of Common Unit and participating security according to distributions declared and the participating rights in undistributed earnings, as if all of the earnings were distributed to the limited partners and the general partner (inclusive of the IDRs of the General Partner which were considered participating securities for purposes of the two-class method). Net income was allocated to the Common Unitholders and the General Partner in accordance with their respective Partnership ownership interests, after giving effect to any priority income allocations for incentive distributions allocated to the General Partner. For purposes of the computation of income per Common Unit for the six months ended March 31, 2007, earnings that would have been allocated to the General Partner for the period prior to the GP Exchange Transaction were not significant.

Basic income per Common Unit for the three and six months ended March 31, 2007 is computed by dividing net income by the weighted average number of outstanding Common Units. Diluted

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income per Common Unit for the three and six months ended March 31, 2007 is computed by dividing net income by the weighted average number of outstanding Common Units and time vested Restricted Units granted under the 2000 Restricted Unit Plan.

Basic income per Common Unit for the three and six months ended March 25, 2006 was computed by dividing the limited partners' share of income, calculated under the two-class method of computing earnings under EITF 03-6, by the weighted average number of outstanding Common Units. Diluted income per Common Unit for the three and six months ended March 25, 2006 was computed by dividing the limited partners' share of income, calculated under the two-class method of computing earnings under EITF 03-6, by the weighted average number of outstanding Common Units and time vested Restricted Units granted under the Partnership's 2000 Restricted Unit Plan. For the three and six months ended March 25, 2006, the computation of net income per Common Unit under EITF 03-6 resulted in a negative impact of $0.24 and $0.31 per Common Unit, respectively, compared to the computation under SFAS 128.

In computing diluted income per Common Unit, weighted average units outstanding used to compute basic income per unit were increased by 171,043 and 151,504 units for the three and six months ended March 31, 2007, respectively, and 124,448 and 109,505 for the three and six months ended March 25, 2006 respectively, to reflect the potential dilutive effect of the unvested Restricted Units outstanding using the treasury stock method.

8. Short-Term and Long-Term Borrowings

Short-term and long-term borrowings consist of the following:

	March 31, 2007	September 30, 2006
Senior Notes, 6.875%, due December 15, 2013, net of unamortized discount of $1,579 and $1,696, respectively	$ 423,421	$ 423,304
Term Loan, 6.29% to 7.16%, due March 31, 2010	125,000	125,000
	548,421	548,304
Less: current portion	—	—
	$ 548,421	$ 548,304

The Partnership and its subsidiary, Suburban Energy Finance Corporation, have issued $425,000 aggregate principal amount of Senior Notes (the ''2003 Senior Notes'') with an annual interest rate of 6.875%. The Partnership's obligations under the 2003 Senior Notes are unsecured and rank senior in right of payment to any future subordinated indebtedness and equally in right of payment with any future senior indebtedness. The 2003 Senior Notes are structurally subordinated to, which means they rank effectively behind, any debt and other liabilities of the Operating Partnership. The 2003 Senior Notes mature on December 15, 2013 and require semi-annual interest payments in June and December. The Partnership is permitted to redeem some or all of the 2003 Senior Notes any time on or after December 15, 2008 at redemption prices specified in the indenture governing the 2003 Senior Notes. In addition, in the event of a change of control of the Partnership, as defined in the 2003 Senior Notes, the Partnership must offer to repurchase the notes at 101% of the principal amount repurchased, if the holders of the notes exercise the right of repurchase.

The Operating Partnership has a revolving credit facility, the Third Amended and Restated Credit Agreement (the ''Revolving Credit Agreement''), which expires on March 31, 2010. The Revolving Credit Agreement provides for a five-year $125,000 term loan facility (the ‘‘Term Loan’’) and a separate working capital facility which provides available revolving borrowing capacity up to $175,000. In addition, under the third amendment to the Revolving Credit Agreement the Operating Partnership is authorized to incur additional indebtedness of up to $10,000 in connection with capital leases and up to $20,000 in short-term borrowings during the period from December 1 to April 1 in each fiscal year to provide additional working capital during periods of peak demand, if necessary.

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Borrowings under the Revolving Credit Agreement, including the Term Loan, bear interest at a rate based upon either LIBOR or Wachovia National Bank’s prime rate, plus, in each case, the applicable margin or the Federal Funds rate plus 1/2 of 1%. An annual facility fee ranging from 0.375% to 0.50%, based upon certain financial tests, is payable quarterly whether or not borrowings occur. As of March 31, 2007 and September 30, 2006, there were no borrowings outstanding under the working capital facility of the Revolving Credit Agreement and there were no borrowings during the first two quarters of fiscal 2007.

In connection with the Term Loan, the Operating Partnership also entered into an interest rate swap contract with a notional amount of $125,000. Effective March 31, 2005 through March 31, 2010, the Operating Partnership will pay a fixed interest rate of 4.66% to the issuing lender on notional principal amount of $125,000, effectively fixing the LIBOR portion of the interest rate at 4.66%. In return, the issuing lender will pay to the Operating Partnership a floating rate, namely LIBOR, on the same notional principal amount. The applicable margin above LIBOR, as defined in the Revolving Credit Agreement, will be paid in addition to this fixed interest rate of 4.66%. The fair value of the interest rate swap amounted to $661 and $1,182 at March 31, 2007 and September 30, 2006, respectively, and is included in other assets with a corresponding amount included within OCI.

The Revolving Credit Agreement and the 2003 Senior Notes both contain various restrictive and affirmative covenants applicable to the Operating Partnership and the Partnership, respectively, including (i) restrictions on the incurrence of additional indebtedness, and (ii) restrictions on certain liens, investments, guarantees, loans, advances, payments, mergers, consolidations, distributions, sales of assets and other transactions. Under the Revolving Credit Agreement, the Operating Partnership is required to maintain a leverage ratio (the ratio of total debt to EBITDA) of less than 4.0 to 1. In addition, the Operating Partnership is required to maintain an interest coverage ratio (the ratio of EBITDA to interest expense) of greater than 2.5 to 1 at the Partnership level. The Partnership and the Operating Partnership were in compliance with all covenants and terms of the 2003 Senior Notes and the Revolving Credit Agreement as of March 31, 2007.

Debt origination costs representing the costs incurred in connection with the placement of, and the subsequent amendment to, the 2003 Senior Notes and the Revolving Credit Agreement were capitalized within other assets and are being amortized on a straight-line basis over the term of the respective debt agreements. Other assets at March 31, 2007 and September 30, 2006 include debt origination costs with a net carrying amount of $6,894 and $7,557, respectively. Aggregate amortization expense related to deferred debt origination costs included within interest expense for the three and six months ended March 31, 2007 was $332 and $664, respectively, and $329 and $660 for the three and six months ended March 25, 2006, respectively.

The aggregate amounts of long-term debt maturities subsequent to March 31, 2007 are as follows: 2007 – $0; 2008 – $0; 2009 – $0; 2010 – $125,000; and, thereafter – $423,421.

9. Distributions of Available Cash

The Partnership makes distributions to its partners approximately 45 days after the end of each fiscal quarter of the Partnership in an aggregate amount equal to its available cash (''Available Cash'') for such quarter. Available Cash, as defined in the Partnership Agreement, generally means all cash on hand at the end of the respective fiscal quarter less the amount of cash reserves established by the Board of Supervisors in its reasonable discretion for future cash requirements. These reserves are retained for the proper conduct of the Partnership's business, the payment of debt principal and interest and for distributions during the next four quarters.

Prior to October 19, 2006, the General Partner had IDRs which represented an incentive for the General Partner to increase distributions to Common Unitholders in excess of the target quarterly distribution of $0.55 per Common Unit. With regard to the first $0.55 of quarterly distributions paid in any given quarter, 98.26% of the Available Cash was distributed to the Common Unitholders and 1.74% was distributed to the General Partner. With regard to the balance of quarterly distributions in excess of the $0.55 per Common Unit target distribution, 85% of the Available Cash was distributed to the Common Unitholders and 15% was distributed to the General Partner. As a result of the GP

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Exchange Transaction, the IDRs were cancelled and the General Partner is no longer entitled to receive any cash distributions in respect of its general partner interests. Accordingly, beginning with the quarterly distribution paid on November 14, 2006 in respect of the fourth quarter of fiscal 2006, 100% of all cash distributions are paid to holders of Common Units.

On April 26, 2007, the Partnership announced a quarterly distribution of $0.70 per Common Unit, or $2.80 on an annualized basis, in respect of the second quarter of fiscal 2007 payable on May 15, 2007 to holders of record on May 8, 2007. This quarterly distribution included an increase of $0.0125 per Common Unit, or $0.05 per Common Unit on an annualized basis.

10. Commitments and Contingencies

Self-Insurance. The Partnership is self-insured for general and product, workers' compensation and automobile liabilities up to predetermined thresholds above which third party insurance applies. As of March 31, 2007 and September 30, 2006, the Partnership had accrued insurance liabilities of $52,872 and $45,413, respectively, representing the total estimated losses under these self-insurance programs. For the portion of the estimated self-insurance liability that exceeds insurance deductibles, the Partnership records an asset within prepaid expense and other current assets or other assets related to the amount of the liability expected to be covered by insurance which amounted to $16,665 ($8,000 of which is reflected in prepaid expenses and other current assets) and $8,665 as of March 31, 2007 and September 30, 2006, respectively. The Partnership is also involved in various legal actions that have arisen in the normal course of business, including those relating to commercial transactions and product liability. Management believes, based on the advice of legal counsel, that the ultimate resolution of these matters will not have a material adverse effect on the Partnership's financial position or future results of operations, after considering its self-insurance liability for known and unasserted self-insurance claims.

Environmental. The Partnership is subject to various federal, state and local environmental, health and safety laws and regulations. Generally, these laws impose limitations on the discharge of pollutants and establish standards for the handling of solid and hazardous wastes. These laws include the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the Clean Air Act, the Occupational Safety and Health Act, the Emergency Planning and Community Right to Know Act, the Clean Water

Act and comparable state statutes. CERCLA, also known as the ‘‘Superfund’’ law, imposes joint and several liability without regard to fault or the legality of the original conduct on certain classes of persons that are considered to have contributed to the release or threatened release of a ‘‘hazardous substance’’ into the environment. Propane is not a hazardous substance within the meaning of CERCLA. However, the Partnership owns real property where such hazardous substances may exist.

The Partnership is also subject to various laws and governmental regulations concerning environmental matters and expects that it will be required to expend funds to participate in the remediation of certain sites, including sites where it has been designated by the Environmental Protection Agency as a potentially responsible party under CERCLA and at sites with aboveground and underground fuel storage tanks.

With the acquisition of the assets of Agway Energy during the first quarter of fiscal 2004, the Partnership acquired certain surplus properties with either known or probable environmental exposure, some of which are currently in varying stages of investigation, remediation or monitoring. Additionally, the Partnership identified that certain active sites acquired contained environmental conditions which may require further investigation, future remediation or ongoing monitoring activities. The environmental exposures include instances of soil and/or groundwater contamination associated with the handling and storage of fuel oil, gasoline and diesel fuel.

As of March 31, 2007 and September 30, 2006, the Partnership had accrued environmental liabilities of $4,151 and $4,786, respectively, representing the total estimated future liability for remediation and monitoring. For the portion of the estimated environmental liability that is expected to be recoverable under state environmental reimbursement funds, the Partnership records an asset within other assets related to the amount of the liability expected to be reimbursed by state agencies, which amounted to $1,011 and $1,294 as of March 31, 2007 and September 30, 2006, respectively.

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Estimating the extent of the Partnership’s responsibility at a particular site, and the method and ultimate cost of remediation of that site, requires making numerous assumptions. As a result, the ultimate cost to remediate any site may differ from current estimates, and will depend, in part, on whether there is additional contamination, not currently known to the Partnership, at that site. However, management believes that the Partnership’s past experience provides a reasonable basis for estimating these liabilities. As additional information becomes available, estimates are adjusted as necessary. While management does not anticipate that any such adjustment would be material to the Partnership’s financial statements, the result of ongoing or future environmental studies or other factors could alter this expectation and require recording additional liabilities. Management currently cannot determine whether the Partnership will incur additional liabilities or the extent or amount of any such liabilities.

Future developments, such as stricter environmental, health or safety laws and regulations thereunder, could affect the Partnership’s operations. Management does not anticipate that the cost of the Partnership’s compliance with environmental, health and safety laws and regulations, including CERCLA, as currently in effect and applicable to known sites will have a material adverse effect on the Partnership’s financial condition or results of operations. To the extent there are any environmental liabilities presently unknown to the Partnership or environmental, health or safety laws or regulations are made more stringent, however, there can be no assurance that the Partnership’s financial condition or results of operations will not be materially and adversely affected.

Legal Matters. Following the Operating Partnership's 1999 acquisition of the propane assets of SCANA Corporation (''SCANA''), Heritage Propane Partners, L.P. had brought an action against SCANA for breach of contract and fraud and against the Operating Partnership for tortious interference with contract and tortious interference with prospective contract. On October 21, 2004, the jury returned a unanimous verdict in favor of the Operating Partnership on all claims, but against SCANA. After the jury returned the verdict against SCANA, the Operating Partnership filed a cross-claim against SCANA for indemnification, seeking to recover defense costs. On November 2, 2006, SCANA and the Operating Partnership reached a settlement agreement wherein the Operating Partnership received $2,000 as a reimbursement of defense costs incurred as a result of the lawsuit. The $2,000 was recorded as a reduction to general and administrative expenses during the first quarter of fiscal 2007.

11. Guarantees

The Partnership has residual value guarantees associated with certain of its operating leases, related primarily to transportation equipment, with remaining lease periods scheduled to expire periodically through fiscal 2014. Upon completion of the lease period, the Partnership guarantees that the fair value of the equipment will equal or exceed the guaranteed amount, or the Partnership will pay the lessor the difference. Although the equipment's fair value at the end of their lease terms has historically exceeded the guaranteed amounts, the maximum potential amount of aggregate future payments the Partnership could be required to make under these leasing arrangements, assuming the equipment is deemed worthless at the end of the lease term, is approximately $14,521. Of this amount, the fair value of residual value guarantees for operating leases entered into after December 31, 2002 was $9,445 and $8,320 as of March 31, 2007 and September 30, 2006, respectively, which is reflected in other liabilities, with a corresponding amount included within other assets, in the accompanying condensed consolidated balance sheets.

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12. Pension Plans and Other Postretirement Benefits

The following table provides the components of net periodic benefit costs for the three and six months ended March 31, 2007 and March 25, 2006:

	Pension Benefits Three Months Ended		Postretirement Benefits Three Months Ended	
	March 31, 2007	March 25, 2006	March 31, 2007	March 25, 2006
Service cost	$ —	$ —	$ 3	$ 4
Interest cost	2,226	2,287	329	422
Expected return on plan assets	(2,579)	(2,565)	—	—
Amortization of prior service costs	—	—	(149)	(180)
Recognized net actuarial loss	1,329	1,617	—	—
Net periodic benefit cost	$ 976	$ 1,339	$ 183	$ 246

	Pension Benefits Six Months Ended		Postretirement Benefits Six Months Ended	
	March 31, 2007	March 25, 2006	March 31, 2007	March 25, 2006
Service cost	$ —	$ —	$ 6	$ 8

Interest cost	4,453	4,574	658	844
Expected return on plan assets	(5,159)	(5,130)	—	—
Amortization of prior service costs	—	—	(298)	(360)
Recognized net actuarial loss	2,658	3,234	—	—
Net periodic benefit cost	$ 1,952	$ 2,678	$ 366	$ 492

There are no projected minimum employer contribution requirements under Internal Revenue Service Regulations for fiscal 2007 under our defined benefit pension plan. The projected annual contribution requirements related to the Partnership's postretirement health care and life insurance benefit plan for fiscal 2007 is $2,200, of which $1,178 has been contributed during the six months ended March 31, 2007. On April 26, 2007, the Partnership announced that its Board of Supervisors authorized a voluntary contribution of approximately $25,000 to its defined benefit pension plan. This voluntary contribution is intended to fully fund the Partnership's accumulated benefit obligation and is expected to substantially reduce, if not eliminate, future funding requirements under the defined benefit pension plan. The Partnership expects to make this voluntary contribution during the third quarter of fiscal 2007 from cash on hand.

13. Segment Information

The Partnership manages and evaluates its operations in five reportable segments: Propane, Fuel Oil and Refined Fuels, Natural Gas and Electricity, HVAC and All Other. The chief operating decision maker evaluates performance of the operating segments using a number of performance measures, including gross margins and operating profit. Costs excluded from these profit measures are captured in Corporate and include corporate overhead expenses not allocated to the operating segments. Unallocated corporate overhead expenses include all costs of back office support functions that are reported as general and administrative expenses in the condensed consolidated statements of operations. In addition, certain costs associated with field operations support that are reported in operating expenses in the condensed consolidated statements of operations, including purchasing, training and safety, are not allocated to the individual operating segments. Thus, operating profit for each operating segment includes only the costs that are directly attributable to the operations of the individual segment. The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies Note in the Partnership's Annual Report on Form 10-K for the fiscal year ended September 30, 2006.

The propane segment is primarily engaged in the retail distribution of propane to residential, commercial, industrial and agricultural customers and, to a lesser extent, wholesale distribution to

large industrial end users. In the residential and commercial markets, propane is used primarily for space heating, water heating, cooking and clothes drying. Industrial customers use propane generally as a motor fuel burned in internal combustion engines that power over-the-road vehicles, forklifts and stationary engines, to fire furnaces and as a cutting gas. In the agricultural markets, propane is primarily used for tobacco curing, crop drying, poultry brooding and weed control.

The fuel oil and refined fuels segment is primarily engaged in the retail distribution of fuel oil, diesel, kerosene and gasoline to residential and commercial customers for use primarily as a source of heat in homes and buildings.

The natural gas and electricity segment is engaged in the marketing of natural gas and electricity to residential and commercial customers in the deregulated energy markets of New York and Pennsylvania. Under this operating segment, the Partnership owns the relationship with the end consumer and has agreements with the local distribution companies to deliver the natural gas or electricity from the Partnership's suppliers to the customer.

The HVAC segment is engaged in the sale, installation and servicing of a wide variety of home comfort equipment and parts, particularly in the areas of heating, ventilation and air conditioning. In furtherance of the Partnership's efforts to restructure its field operations and to focus on its core operating segments, during fiscal 2006 the Partnership initiated plans to streamline the HVAC service offerings by significantly reducing installation activities and focusing on service offerings that support the Partnership's existing customer base within its propane, refined fuels and natural gas and electricity segments.

The all other business segment includes activities from the HomeTown Hearth & Grill and Suburban Franchising subsidiaries.

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The following table presents certain data by reportable segment and provides a reconciliation of total operating segment information to the corresponding consolidated amounts for the periods presented:

			Three Months Ended			Six Months	
			March 31, 2007		March 25, 2006	March 31, 2007	
Revenues:							
Propane			$ 392,243		$ 386,610	$ 679,122	$
Fuel oil and refined fuels			111,215		133,567	180,085	
Natural gas and electricity			36,455		46,111	59,200	
HVAC			14,671		22,416	33,130	
All other			1,534		2,239	3,568	
Total revenues			$ 556,118		$ 590,943	$ 955,105	$
Income before interest expense and income taxes:							
Propane			$ 112,658		$ 95,270	$ 175,466	$
Fuel oil and refined fuels			21,579		20,549	32,385	
Natural gas and electricity			5,027		5,569	8,306	
HVAC			(805)		(3,819)	239	
All other			(428)		(2,123)	(514)	
Corporate			(22,471)		(20,395)	(36,692)	
Total income before interest expense and income taxes			115,560		95,051	179,190	
Reconciliation to income from continuing operations:							—
Conversion of Series D Preferred Shares & Dividends	1,696,136	170		—	—	—	—
Interest Expense paid with Common stock	180,499	18		—	—	—	—
Issuance of Restricted Stock	51,425	5		—	—	—	—
Common Stock Issued to Placement Agent	77,778	8		—	—	—	—
Stock based compensation	—	—		—	—	—	—

Deemed dividends on preferred stock and accretion of warrants	—	—	—	—	—	—
Net Loss	—	—	—	—	—	—
Balance, December 31, 2014	18,211,104	$ 1,821	212,390	$ 21	—	$—

The accompanying notes are an integral part of these consolidated financial statements.

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ASCENT SOLAR TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	Common Stock		Series A Preferred Stock		Series B-1 Preferred Stock		Series C Preferred Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2014	18,211,104	$1,821	212,390	$21	—	$—	—	$—	$306,947,144	$(299,283,996)	$7,664,990
Proceeds from private placement: Common stock	2,000,000	200	—	—	—	—	—	—	1,999,800	—	2,000,000
Conversion of Series D Preferred Stock into Common Shares	1,465,972	147	—	—	—	—	—	—	813,845	—	813,992
Conversion of Series D-1 Preferred Stock into Common Shares	2,305,824	231	—	—	—	—	—	—	3,169,118	—	3,169,349
Conversion of Convertible Notes into Common Shares	95,517,222	9,552	—	—	—	—	—	—	25,548,368	—	25,557,920
Conversion of Series E Preferred Stock into Common Shares	4,957,585	496	—	—	—	—	—	—	745,420	—	745,916
Common Shares sold pursuant to the Committed Equity Line	16,850,923	1,685	—	—	—	—	—	—	1,998,315	—	2,000,000
Conversion of Right Shares into Common Shares	8,300,000	830	—	—	—	—	—	—	2,904,170	—	2,905,000
	3,823,791	382	—	—	—	—	—	—	1,034,153	—	1,034,535

Interest and Dividends paid with Common Stock											
Issuance of Restricted Stock	258,365	26	—	—	—	—	—	—	(26)	—	—
Common Stock Issued to Placement Agent	132,191	13	—	—	—	—	—	—	108,967	—	108,980
Commitment Shares	860,000	86	—	—	—	—	—	—	53,914	—	54,000
Common shares issued in payment of consulting expenses	513,888	51	—	—	—	—	—	—	89,948	—	89,999
Stock based compensation	—	—	—	—	—	—	—	—	856,811	—	856,811
Beneficial Conversion Feature related to the September 2015 Convertible Notes	—	—	—	—	—	—	—	—	1,375,000	—	1,375,000
Net Loss	—	—	—	—	—	—	—	—	—	(45,797,798)	(45,797,798)
Balance, December 31, 2015	155,196,865	$15,520	212,390	$21	—	$—	—	$—	$347,644,947	$(345,081,794)	$2,578,694

The accompanying notes are an integral part of these consolidated financial statements.

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ASCENT SOLAR TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the Years Ended December 31, 2015	2014
Operating Activities:		
Net loss	$(45,797,798)	$(43,354,449)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	5,633,428	5,960,843
Stock based compensation	856,811	834,317
Common stock issued for services	89,999	—
Amortization of financing costs	362,996	51,689
Impairment loss	12,570	324,031
Non-cash interest expense	1,439,425	266,423
Amortization of debt discount	23,968,539	3,267,340
Non-cash Preferred C Penalty Shares	—	300,000
Loss on Note Receivable	99,000	—
Loss on Joint Venture	128,709	—
Bad debt expense	77,524	32,566
Accrued litigation settlement	(493,732)	(325,508)
Deemed interest expense on warrant liability	909,092	4,037,517
Change in fair value of derivatives and loss on extinguishment of liabilities, net	(9,467,070)	1,051,540
Changes in operating assets and liabilities:		
Accounts receivable	711,696	(2,356,595)
Related party receivables and deposits	—	21,122
Inventories	(1,845,168)	(539,600)
Prepaid expenses and other current assets	248,781	(387,809)
Accounts payable	2,055,575	1,126,992
Accrued expenses	(1,220,311)	1,516,377
Warranty reserve	128,000	88,063
Net cash used in operating activities	(22,101,934)	(28,085,141)
Investing Activities:		
Purchase of property, plant and equipment	(29,194)	(134,727)
Note Receivable	—	(171,000)
Investment in Joint Venture	191,291	(320,000)
Interest income on restricted cash	(49,446)	—
Patent activity costs	(308,567)	(465,721)
Net cash used in investing activities	(195,916)	(1,091,448)
Financing Activities:		
Payment of debt financing costs	(466,250)	(447,645)
Proceeds from Promissory Note	500,000	—
Repayment of debt	(276,259)	(282,960)
Repayment of convertible notes	(1,000,000)	—
Proceeds from convertible notes	2,000,000	32,000,000
Restricted cash	9,250,000	(28,001,880)
Proceeds from Committed Equity Line	2,000,000	—
Proceeds from issuance of stock and warrants	7,300,000	25,907,495
Net cash provided by financing activities	19,307,491	29,175,010

Net change in cash and cash equivalents	(2,990,359)	(1,579)
Cash and cash equivalents at beginning of period	3,316,576	3,318,155
Cash and cash equivalents at end of period	$326,217	$3,316,576
Supplemental Cash Flow Information:		
Cash paid for interest	$477,354	$519,014
Non-Cash Transactions:		
Non-cash conversions of preferred stock and convertible notes to equity	$19,988,994	$16,278,954
Make-whole provision on convertible preferred stock	$—	$8,087,500

The accompanying notes are an integral part of these consolidated financial statements.

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ASCENT SOLAR TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION

Ascent Solar Technologies, Inc. (“Ascent”) was incorporated on October 18, 2005 from the separation by ITN Energy Systems, Inc. (“ITN”) of its Advanced Photovoltaic Division and all of that division’s key personnel and core technologies. ITN, a private company incorporated in 1994, is an incubator dedicated to the development of thin film, photovoltaic (“PV”), battery, fuel cell and nano technologies. Through its work on research and development contracts for private and governmental entities, ITN developed proprietary processing and manufacturing know how applicable to PV products generally, and to Copper-Indium-Gallium-diSelenide (“CIGS”) PV products in particular. ITN formed Ascent to commercialize its investment in CIGS PV technologies. In January 2006, in exchange for 102,800 shares of common stock of Ascent, ITN assigned to Ascent certain CIGS PV technologies and trade secrets and granted to Ascent a perpetual, exclusive, royalty free worldwide license to use, in connection with the manufacture, development, marketing and commercialization of CIGS PV to produce solar power, certain of ITN’s existing and future proprietary and control technologies that, although non-specific to CIGS PV, Ascent believes will be useful in its production of PV modules for its target markets. Upon receipt of the necessary government approvals and pursuant to novation in early 2007, ITN assigned government funded research and development contracts to Ascent and also transferred the key personnel working on the contracts to Ascent.

Currently, the Company is producing consumer oriented products focusing on charging mobile devices powered by or enhanced by the Company's solar modules. Products in these markets are priced based on the overall product value proposition rather than a commodity-style price per watt basis. The Company continues to develop new consumer products and has adjusted utilization of its equipment to meet near term sales forecasts.

Reverse Stock Split

On August 26, 2014, the Company, a Delaware corporation, filed a Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Company (the "Certificate of Amendment") with the Secretary of State of the State of Delaware to effect a reverse stock split of the Company's common stock, par value $0.0001 per share at a ratio of one-for-ten (the "Reverse Stock Split"). The Certificate of Amendment did not change the number of authorized shares, or the par value, of the Company’s common stock. The Certificate of Amendment provides that every ten shares of the Company’s issued and outstanding common stock were automatically combined into one issued and outstanding share of the Company’s common stock. All shares and per share amounts in the consolidated financial statements and accompanying notes have been retroactively adjusted to give effect to the Reverse Stock Split.

NOTE 2. BASIS OF PRESENTATION

The accompanying consolidated financial statements have been derived from the accounting records of Ascent Solar Technologies, Inc., Ascent Solar (Asia) Pte. Ltd., and Ascent Solar (Shenzhen) Co., Ltd. (collectively, "the Company") as of December 31, 2015 and December 31, 2014, and the results of operations for the year ended December 31, 2015 and 2014. Ascent Solar (Shenzhen) Co., Ltd. is wholly owned by Ascent Solar (Asia) Pte. Ltd., which is wholly owned by Ascent Solar Technologies, Inc. All significant inter-company balances and transactions have been eliminated in the accompanying consolidated financial statements.

The Company’s activities from inception through December 31, 2014 consisted substantially of raising capital, research and development, establishment and development of the Company's production plant, product development and establishing sales channels for its line of consumer products which is sold under the EnerPlex™ brand. Revenues from inception through December 31, 2014 had been primarily generated from the Company’s governmental research and development contracts until EnerPlex branded products began to sell in higher volumes in 2014. During this time period the Company's primary focus was not generating significant revenue, and thus cost of revenue was not considered a relevant number due to the development nature of the Company. As such, the majority of the Company's costs were considered to be research and development costs from inception through December 31, 2014. Beginning in 2015, due to the success of EnerPlex branded products, the Company's primary focus going forward is to build on the

Company's past results and to significantly increase our revenues. As the Company's primary focus is increasing revenues by utilizing and expanding the sales channels established during prior years, the Company has determined that cost of revenue is a relevant number going forward. As such, the Company has included a Cost of revenues line item in the Consolidated Statements of Operations for the year ended December 31, 2015.

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NOTE 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Cash Equivalents: The Company classifies all short-term investments in interest bearing bank accounts and highly liquid debt securities purchased with an original maturity of three months or less to be cash equivalents. The Company maintains cash balances which may exceed federally insured limits. The Company does not believe this results in significant credit risk.

Restricted Cash: Cash and cash equivalents that are restricted as to withdrawal or use under the terms of the November 2014 Purchase Agreement are presented as restricted cash separate from cash and cash equivalents on our balance sheet.

Fair Value Estimates: Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The Company uses fair value hierarchy based on three levels of inputs, of which, the first two are considered observable and the last unobservable, to measure fair value:

- Level 1 - Quoted prices in active markets for identical assets or liabilities.
- Level 2 - Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities

Certain long-lived assets and current liabilities have been measured at fair value on a recurring and non-recurring basis. See Note 6. Property, Plant and Equipment, Note 9. Convertible Note and Series D Preferred Stock, Note 11. Series E Preferred Stock, and Note 12. Make-whole Dividend Liability. The carrying amount of our long term debt outstanding approximates fair value because our current borrowing rate does not materially differ from market rates for similar bank borrowings. The carrying value for cash and cash equivalents, restricted cash, accounts receivable, accounts payable, accrued expenses and other assets and liabilities approximate their fair values due to their short maturities.

Related Party Transactions: The Company is party to several operating agreements, including a Joint Development Agreement, a Supply Agreement, a Contract Manufacturing Agreement, and a Services Agreement with TFG Radiant Investment Group Ltd. and its affiliates (“TFG Radiant”), which is also the Company's largest shareholder. Accounting for transactions under these agreements is consistent with the Company's other significant accounting policies.

Foreign Currencies: Bank account balances held in foreign currencies are translated to U.S. dollars utilizing the period end exchange rate. Gains or losses incurred in connection with the Company’s accounts held in foreign currency were not material for the years ended December 31, 2015 and 2014 and were recorded in “Other Income/(Expense)” in the Consolidated Statements of Operations.

Revenue Recognition:

Product revenue - The Company generated product revenues of $6,205,000 for the year ended December 31, 2015. Product revenue is generated from commercial sales of flexible PV modules and PV integrated consumer electronics, non-PV integrated power banks and associated accessories. Products are sold through the Company's own e-commerce website, online retailers, direct to retailers and indirectly to retailers through distributors. Revenue is recognized as products are shipped or delivered and title has transferred to the customer. In certain instances, the Company has agreed to refund a portion of the purchase price to customers if the Company decreases its standard retail price. The Company estimates the effect of this price protection and records the difference as a reduction of revenue at the time of sale. Estimated costs of returns and allowances and discounts are accrued as a reduction to sales when revenue is recognized. See Marketing and Advertising Costs below for accounting treatment related to cooperative advertising programs.

Government contracts revenue - Revenue from governmental research and development contracts is generated under terms that are cost plus fee or firm fixed price. Revenue from cost plus fee contracts is recognized as costs are incurred on the basis of direct costs plus allowable indirect costs and an allocable portion of the fixed fee. Revenue from firm fixed price contracts is recognized under the percentage-of-completion method of accounting, with costs and estimated profits included in contract revenue as work is performed. If actual and estimated costs to complete a contract indicate a loss, provision is made currently for the loss anticipated on the contract.

Marketing and Advertising Costs: The Company advertises in print, television, online and through social media. The Company will also authorize customers to run advertising campaigns on its behalf through various media outlets. Marketing and advertising costs are expensed as incurred. Marketing and advertising expenses were $3,369,000 and $4,756,000 for the years ended December 31, 2015 and 2014, respectively.

Some of the Company's distributor relationships allow for discounts to be taken to fund cooperative advertising programs. These discounts are applied as credits against outstanding receivable balances and recorded net of revenue. Large cooperating advertising campaigns, funded either by cash payments by the Company, or as credits against outstanding receivables, are expensed as incurred and included in Selling, general and administrative costs if, and only if, the following criteria are met: 1) the Company receives an identifiable benefit (goods or services) in exchange for the consideration, with the identifiable benefit being sufficiently separable from the distributor's purchase of the Company’s products; and 2) the Company can reasonably estimate the fair value of the identifiable benefit. If the amount of consideration paid by the Company exceeds the estimated fair value of the benefit received, that excess amount shall be characterized as a reduction of revenue.

Shipping and Handling Costs: The Company classifies shipping and handling costs for products shipped to customers as a component of “Cost of revenues” on the Company’s Consolidate Statements of Operations. Customer payments of shipping and handling costs are recorded as a component of Revenues.

Receivables and Allowance for Doubtful Accounts: Trade accounts receivable are recorded at the invoiced amount as the result of transactions with customers. The Company maintains allowances for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments. The Company estimates the collectability of accounts receivable using analysis of historical bad debts, customer credit-worthiness and current economic trends. Reserves are established on an account-by-account basis. Account balances are written off against the allowance in the period in which the Company determines that is it probable that the receivable will not be recovered. As of December 31, 2015 and 2014, the Company had an allowance for doubtful accounts of $60,347 and $32,566, respectively.

Product Warranties: The Company provides a limited warranty to the original purchaser of products against defective materials and workmanship. The Company also guarantees that standalone modules and PV integrated consumer electronics will achieve and maintain the stated conversion efficiency rating for certain products. Warranty accruals are recorded at the time of sale and are estimated based upon product warranty terms, historical experience and analysis of peer company product returns. The Company assesses the adequacy of its liabilities and makes adjustments as necessary based on known or anticipated warranty claims, or as new information becomes available.

Convertible Preferred Stock: During the second and third quarters of 2013, the Company issued Series A preferred stock and warrants. Upon issuance, the Series A preferred stock was evaluated under FASB ASC 480, “Distinguishing Liabilities from Equity" and it was determined the Series A preferred stock was not within the scope of ASC 480; therefore, the Series A preferred stock was not considered a liability under ASC 480. The warrants associated with the Series A preferred stock offering were also not considered a liability as assessed under ASC 480.

During the fourth quarter of 2013, the Company issued Series B preferred stock. Upon issuance, the Series B preferred stock was evaluated under FASB ASC 480, “Distinguishing Liabilities from Equity" and it was determined the Series B preferred stock was not within the scope of ASC 480; therefore, the Series B preferred stock was not considered a liability under ASC 480.

During the second quarter of 2014, the Company issued Series C preferred stock. Upon issuance, the Series C preferred stock was evaluated under FASB ASC 480, “Distinguishing Liabilities from Equity" and it was determined the Series C preferred stock was not within the scope of ASC 480; therefore, the Series C preferred stock was not considered a liability under ASC 480.

During the fourth quarter of 2014, the Company issued Series D preferred stock. Upon issuance, the Series D preferred stock was evaluated under FASB ASC 480, “Distinguishing Liabilities from Equity" and it was determined the Series D preferred stock was within the scope of ASC 480; therefore, the Series D preferred stock was considered a liability under ASC 480. Refer to Note 9 for further information.

During the first quarter of 2015, the Company issued Series D-1 preferred stock. Upon issuance, the Series D-1 preferred stock was evaluated under FASB ASC 480, “Distinguishing Liabilities from Equity" and it was determined the Series D-1 preferred stock was within the scope of ASC 480; therefore, the Series D-1 preferred stock was considered a liability under ASC 480. Refer to Note 9 for further information.

During the fourth quarter of 2015, the Company issued Series E preferred stock. Upon issuance, the Series E preferred stock was evaluated under FASB ASC 480, “Distinguishing Liabilities from Equity" and it was determined the Series E preferred stock was within the scope of ASC 480; therefore, the Series E preferred stock is considered a liability under ASC 480. Refer to Note 11 for further information.

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Make-whole dividend liability: The Series A, Series B, and Series C preferred stock issuances include make-whole provisions with variable rate dividends which are indexed to the Company's own stock. The make-whole provisions have attributes of embedded derivatives and were evaluated under ASC 815, “Derivatives and Hedging" (“ASC 815”). The Company believes the Series A, Series B, and Series C preferred stock are considered equity hosts for the purposes of evaluating the make-whole provisions for potential bifurcation. The Series A, Series B, and Series C preferred stock holders may convert to common shares at any time after issuance. Upon conversion, the holders are entitled to a make-whole dividend which is payable in cash or common shares, at the Company's election. The Company concluded the make-whole payments should be characterized as embedded derivatives under ASC 815. The fair value of make-whole dividend liabilities must be evaluated at each period end, with changes recorded as a component of Other Income/(Expense).

Warrant liability: Warrants to purchase the Company's common stock with nonstandard antidilution provisions, regardless of the probability or likelihood that may conditionally obligate the issuer to ultimately transfer assets, are classified as liabilities and are recorded at their estimated fair value at each reporting period. Any change in fair value of these warrants is recorded at each reporting period in Other income/(expense) on the Company's statement of operations.

Patents: At such time as the Company is awarded patents, patent costs are amortized on a straight-line basis over the legal life on the patents, or over their estimated useful lives, whichever is shorter. As of December 31, 2015, the Company had $1,568,000 of net patent costs, of which $50,000 represents costs net of amortization incurred for awarded patents, and the remaining $1,518,000 represents costs incurred for patent applications to be filed. During the year ended December 31, 2015, the Company capitalized $309,000 in patent costs as it worked to secure design rights and trademarks for newly developed products. Amortization expense was $47,000 and $39,000 for the years ended December 31, 2015 and 2014, respectively. Amortization expense is expected to remain consistent or increase slightly in future periods.

Inventories: All inventories are stated at the lower of cost or market, with cost determined using the weighted average method. Inventory balances are frequently evaluated to ensure they do not exceed net realizable value. The computation for net realizable value takes into account many factors, including expected demand, product life cycle and development plans, module efficiency, quality issues, obsolescence and others. Management's judgment is required to determine reserves for obsolete or excess inventory. As of December 31, 2015 and 2014, the Company had inventory reserve balances of $653,000 and $864,000, respectively. If actual demand and market conditions are less favorable than those estimated by management, additional inventory write downs may be required. During the years ended December 31, 2015 and December 31, 2014, the Company recognized no lower of cost or market adjustments.

Property, Plant and Equipment: Property, plant and equipment are recorded at the original cost to the Company. Assets are being depreciated over estimated useful lives of three to forty years using the straight-line method, as presented in the table below, commencing when the asset is placed in service. Leasehold improvements are depreciated over the shorter of the remainder of the lease term or the life of the improvements. Upon retirement or disposal, the cost of the asset disposed of and the related accumulated depreciation are removed from the accounts and any gain or loss is reflected in income. Expenditures for repairs and maintenance are expensed as incurred.

	Useful Lives in Years
Buildings	40
Manufacturing machinery and equipment	5 - 10
Furniture, fixtures, computer hardware/software	3 - 7
Leasehold improvements	life of lease

Impairment of Long-lived Assets: The Company analyzes its long-lived assets (property, plant and equipment) and definitive-lived intangible assets (patents) for impairment, both individually and as a group, whenever events or changes in circumstances indicate the carrying amount of the assets may not be recoverable. Events that might cause impairment would include significant current period operating or cash flow losses associated with the use of a long-lived asset or group of assets combined with a history of such losses, significant changes in the manner of use of assets and significant negative industry or economic trends. An undiscounted cash flow analysis is calculated to determine if impairment exists. If impairment is determined to exist, any related loss is calculated using the difference between the fair value and the carrying value of the assets. During the years ended December 31, 2015 and 2014, the Company incurred impairments of its manufacturing facilities and equipment in the amounts of $12,600 and $324,000, respectively. The impairments incurred in 2015 and 2014 were based on estimates prepared by management.

Net Loss per Common Share: Basic loss per share does not include dilution and is computed by dividing income available to common stockholders by the weighted average number of shares outstanding during the period. Diluted earnings per share reflect the potential securities that could share in the earnings of the Company, similar to fully diluted earnings per share. Common stock equivalents outstanding as of December 31, 2015 of approximately 48.8 million shares have been omitted from loss per share because they are anti-dilutive. Common stock equivalents consist of stock options, unvested restricted stock, warrants, preferred stock, preferred stock make-whole dividend liability amounts (assuming the make-whole dividend liability is paid in common stock in lieu of cash), and convertible notes (assuming the amortization payments are paid in common stock in lieu of cash). Net loss per common share was the same for both basic and diluted methods for the periods ended December 31, 2015 and 2014.

Research, Development and Manufacturing Operations Costs: Research, development and manufacturing operations expenses were $6.7 million and $18.8 million for the years ended December 31, 2015 and 2014, respectively. Research, development and manufacturing operations expenses include: 1) technology development costs, which include expenses incurred in researching new technology, improving existing technology and performing federal government research and development contracts, 2) product development costs, which include expenses incurred in developing new products and lowering product design costs, and 3) pre-production and production costs, which include engineering efforts to improve production processes, material yields and equipment utilization, and manufacturing efforts to produce saleable product. Research, development and manufacturing operations costs are expensed as incurred, with the exception of costs related to inventoried raw materials, work-in-process and finished goods, which are expensed as Cost of revenue as products are sold.

Income Taxes: Deferred income taxes are provided using the liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carry forwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of the changes in tax laws and rates as of the date of enactment. Interest and penalties, if applicable, would be recorded in operations.

The Company has analyzed filing positions in all of the federal and state jurisdictions where it is required to file income tax returns, as well as all open tax years (2011-2015) in these jurisdictions. The Company believes its income tax filing positions and deductions will be sustained on audit and does not anticipate any adjustments that will result in a material adverse effect on the Company’s financial condition, results of operations, or cash flows. Therefore, no reserves for uncertain income tax positions have been recorded.

Share-Based Compensation: The Company measures and recognizes compensation expense for all share-based payment awards made to employees, officers, directors, and consultants based on estimated fair values. The value of the portion of the award that is ultimately expected to vest is recognized as expense over the requisite service period in the Company’s Statements of Operations. Share-based compensation is based on awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, as necessary, in subsequent periods if actual forfeitures differ from those estimates. For purposes of determining estimated fair value of share-based payment awards on the date of grant the Company uses the Black-Scholes option-pricing model (“Black-Scholes Model”) for option awards. The Black-Scholes Model requires the input of highly subjective assumptions. Because the Company’s employee stock options may have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management’s opinion, the existing models may not provide a reliable single measure of the fair value of the Company’s employee stock options. Management will continue to assess the assumptions and methodologies used to calculate estimated fair value of share-based compensation. Circumstances may change and additional data may become available over time, which result in changes to these assumptions and methodologies, which could materially impact the Company’s fair value determination. The Company estimates the fair value of its restricted stock awards as its stock price on the grant date.

The accounting guidance for share-based compensation may be subject to further interpretation and refinement over time. There are significant differences among option valuation models, and this may result in a lack of comparability with other companies that use different models, methods and assumptions. If factors change and the Company employs different assumptions in the accounting for share-based compensation in future periods, or if the Company decides to use a different valuation model, the compensation expense the Company records in the future may differ significantly from the amount recorded in the current period and could materially affect its loss from operations, net loss and net loss per share.

Reclassifications: Certain reclassifications have been made to the 2014 financial information to conform to the 2015 presentation. Such reclassifications had no effect on the net loss.

Use of Estimates: The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

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Recently Issued Accounting Standards

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606). The update will establish a comprehensive revenue recognition standard for virtually all industries in GAAP. ASU 2014-09 will change the amount and timing of revenue and cost recognition, implementation, disclosures and documentation. In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers (Topic 606): Deferral of Effective Date. The amendments in ASU 2015-14 defer the effective date of ASU 2014-09 for all entities by one year. ASU 2014-09 is now effective for the Company in fiscal year 2018. The Company is researching whether the adoption of ASU 2014-09 will have a material effect on the Company's consolidated financial statements.

In August 2014, the FASB issued ASU No. 2014-15, Presentation of Financial Statements—Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern. ASU 2014-15 requires management to evaluate, in connection with preparing financial statements for each annual and interim reporting period, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about an entity's ability to continue as a going concern within one year after the date that the financial statements are issued and to provide certain disclosures if it concludes that substantial doubt exists. ASU 2014-15 is effective for all entities for the annual period ending after December 15, 2016, and for annual and interim periods thereafter, with early adoption permitted. The Company has not early adopted ASU 2014-15. The Company is researching whether the adoption of ASU 2014-15 will have a material effect on the Company's consolidated financial statements.

In July 2015, the FASB issued ASU No. 2015-11, Inventory (Topic 330): Simplifying the Measurement of Inventory, which states that inventory should be measured at the lower of cost and net realizable value. Net realizable value is defined as estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. This ASU is effective within annual periods beginning on or after December 15, 2016, including interim periods within that reporting period. The Company is currently evaluating the impact, if any, that the adoption of this guidance will have on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842). ASU 2016-02 requires lessees to recognize all leases, including operating leases, on the balance sheet as a lease asset or lease liability, unless the lease is a short-term lease. ASU 2016-02 also requires additional disclosures regarding leasing arrangements. ASU 2016-02 is effective for interim periods and fiscal years beginning after December 15, 2018, and early application is permitted. The Company is currently evaluating the impact, if any, that the adoption of this guidance will have on its consolidated financial statements.

NOTE 4. LIQUIDITY AND CONTINUED OPERATIONS

On November 14, 2014, the Company entered into a securities purchase agreement (the "November 2014 Purchase Agreement") with one institutional and accredited investor (the "Investor"). Pursuant to the terms of the November 2014 Purchase Agreement, the Company sold to the Investor (i) $3,000,000 (3,000 shares) of Series D Convertible Preferred Stock (the "Series D Preferred Stock"), and (ii) $32,000,000 original principal amount of senior secured convertible notes (the "Notes"). On September 4, 2015, the Company entered into a Cancellation and Waiver Agreement (the “Cancellation Agreement”), between the Company and the Investor. The Cancellation Agreement was amended on October 8, 2015 and November 22, 2015. Pursuant to the Cancellation Agreement, the Company has agreed to retire all $21.2 million aggregate principal amount of its currently outstanding Notes. See Note 9 for further information related to the Cancellation Agreement and the subsequent Cancellation Agreement amendments.

In February 2015, the Company completed the sale of 2,500 shares of Series D-1 preferred stock in a private placement for gross proceeds of $2.5 million. The transaction closed on February 25, 2015. See Note 9 for further information.

On April 6, 2015, the Company entered into a securities purchase agreement with TFG Radiant for a private placement of a total of 1,000,000 shares of the Company's common stock which resulted in gross proceeds of approximately $1 million to the Company. The transaction closed on April 17, 2015.

On June 10, 2015, the Company entered into a securities purchase agreement with TFG Radiant for a private placement of a total of 1,000,000 shares of the Company's common stock which resulted in gross proceeds of approximately $1 million to the Company. The transaction closed on July 10, 2015.

On September 4, 2015, the Company entered into a note purchase agreement between the Company and two accredited investors (the "Lenders"). Pursuant to the new loan agreement, the Company issued to the Lenders $1.5 million original principal amount of secured subordinated convertible notes on September 4, 2015, and an additional $0.5 million original principal amount of secured subordinated convertible notes on September 28, 2015. See Note 10 for further information.

On November 4, 2015, the Company entered into a securities purchase agreement with a Private Investor to issue 2,800 shares of Series E Preferred Stock to an investor in exchange for $2,800,000. See Note 11 for further information.

On November 10, 2015, the Company and the Private Investor entered into a committed equity line purchase agreement (the "CEL"). Under the terms and subject to the conditions of the CEL purchase agreement, at its option the Company has the right to sell to the Private Investor, and the Private Investor is obligated to purchase from the Company, up to $32.2 million of the Company's common stock, subject to certain limitations, from time to time, over the 36-month period commencing on December 18, 2015, the date that the registration statement was declared effective by the SEC. The remaining availability under the CEL as of December 31, 2015 is $30.2 million.

Actual sales of shares of common stock to the Private Investor under the CEL purchase agreement will depend on a variety of factors to be determined by the Company from time to time, including, among others, our ability to register shares of common stock with the SEC, market conditions, the trading price of the common stock and determinations by the Company as to the appropriate sources of funding for the Company and its operations.

As of January 27, 2016, the Company is not able to access the CEL because the Company does not have any registered shares available for use in connection with the CEL purchase agreement. The Company is in the process of registering an additional 48,000,000 shares for such purpose with the SEC. If such additional registration statement is declared effective by the SEC and such additional shares become available for use by the Company, the Company's sales of shares pursuant to the CEL purchase agreement during 2016 would be limited to such 48,000,000 shares. The Company's use of the CEL in 2017 and beyond would require, among other things, the Company to file additional registration statements in the future that cover additional shares and have such registration statements declared effective. The Company would also need to maintain the effectiveness of such additional registration statements.
The Company has continued PV production at its manufacturing facility. The Company does not expect sales revenue and cash flows will be sufficient to support operations and cash requirements until it has fully implemented its new consumer products strategy. Changes in the level of expected operating losses, the timing of planned capital expenditures or other factors may negatively impact cash flows and reduce current cash and investments faster than anticipated. During 2015 the Company used $22.1 million in cash for operations, or an average of $5.5 million per quarter. During the fourth quarter of 2015 the Company used $4.6 million in cash for operations. The Company's primary significant long term obligation consists of a note payable of $5.8 million to a financial institution secured by a mortgage on its headquarters and manufacturing building in Thornton, Colorado. Total payments of $0.8 million, including principal and interest, will come due in 2016. Additionally, the Company owes $0.9 million as of December 31, 2015 related to a litigation settlement reached in April 2014, which is being paid in equal installments over 40 month which began April 2014.
Additional projected product revenues are not anticipated to result in a positive cash flow position for the year 2016 overall. As such, cash liquidity sufficient for the year ending December 31, 2016 will require additional financing. Subsequent to year end, on January 19, 2016, the Company entered into a securities purchase agreement (the "Series F SPA") with the Private Investor for the sale of $7,000,000 of the Company's newly designated Series F 7% Convertible Preferred Stock (the "Series F Preferred Stock"). See Note 20 for further information.
The Company continues to accelerate sales and marketing efforts related to its consumer products strategy through increased hiring and expansion of its sales channel. The Company has begun activities related to securing additional financing through strategic or financial investors, but there is no assurance the Company will be able to raise additional capital on acceptable terms or at all. If the Company's revenues do not increase rapidly, and/or additional financing is not obtained, the Company will be required to significantly curtail operations to reduce costs and/or sell

assets. Such actions would likely have an adverse impact on the Company's future operations. As a result of the Company's recurring losses from operations, and the need for additional financing to fund its operating and capital requirements, there is uncertainty regarding the Company's ability to maintain liquidity sufficient to operate its business effectively, which raises substantial doubt as to the Company's ability to continue as a going concern.

NOTE 5. TRADE RECEIVABLES

Trade receivables consist of amounts generated from product sales and government contracts. Accounts receivable totaled $1.99 million and $2.78 million as of December 31, 2015 and 2014, respectively. Product revenue for the year ended December 31, 2015 includes $2.73 million of sales to one major customer, representing 44% of total product revenue. Product revenue for this same major customer was $2.68 million, representing 54% of total product revenue, for the year ended

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December 31, 2014. Receivables from this major customer were $1.13 million at December 31, 2015 and $1.81 million at December 31, 2014.

Provisional Indirect Cost Rates - The Company bills the government under cost-based research and development contracts at provisional billing rates which permit the recovery of indirect costs. These rates are subject to audit on an annual basis by the government agencies' cognizant audit agency. The cost audit may result in the negotiation and determination of the final indirect cost rates. In the opinion of management, re-determination of any cost-based contracts will not have a material effect on the Company's financial position or results of operations.

NOTE 6. PROPERTY, PLANT AND EQUIPMENT

The following table summarizes property, plant and equipment as of December 31, 2015 and December 31, 2014:

	As of December 31,	
	2015	2014
Building	$5,828,960	$5,828,960
Furniture, fixtures, computer hardware and computer software	480,976	475,266
Manufacturing machinery and equipment	31,265,800	31,227,523
Depreciable property, plant and equipment	37,575,736	37,531,749
Manufacturing machinery and equipment in progress	—	66,703
Property, plant and equipment	37,575,736	37,598,452
Less: Accumulated depreciation and amortization	(28,484,708)	(22,941,264)
Net property, plant and equipment	$9,091,028	$14,657,188

The Company analyzes its long-lived assets for impairment, both individually and as a group, whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable.

Depreciation expense for the years ended December 31, 2015 and 2014 was $5,582,783 and $5,925,546, respectively. Depreciation expense is recorded under "Depreciation and amortization expense" in the Consolidated Statements of Operations.

NOTE 7. INVENTORIES

Inventories consisted of the following at December 31, 2015 and December 31, 2014:

	As of December 31,	
	2015	2014
Raw materials	$925,064	$941,912
Work in process	671,746	335,275
Finished goods	2,675,570	1,150,025
Total	$4,272,380	$2,427,212

NOTE 8. DEBT

On February 8, 2008, the Company acquired a manufacturing and office facility in Thornton, Colorado, for approximately $5.5 million. The purchase was financed by a promissory note, deed of trust and construction loan agreement (the "Construction Loan") with the Colorado Housing and Finance Authority ("CHFA"), which provided the Company borrowing availability of up to $7.5 million for the building and building improvements. In 2009, the Construction Loan was converted to a permanent loan pursuant to a Loan Modification Agreement between the Company and CHFA (the "Permanent Loan"). The Permanent Loan, collateralized by the building, has an interest rate of 6.6% and the principal will be amortized through its term to January 2028. Further, pursuant to certain covenants in the Permanent Loan, the Company may not, among other things, without CHFA's prior written consent (which by the terms of the deed of trust is subject to a reasonableness requirement): create or incur additional indebtedness (other than obligations created or incurred in the ordinary course of business); merge or consolidate with any other entity; or make loans or advances to the Company's officers, shareholders, directors or employees.

As of December 31, 2015, future principal payments on long-term debt are due as follows:

2016	$348,722
2017	344,730
2018	368,183
2019	393,232
2020	419,985
Thereafter	3,916,064
	$5,790,916

NOTE 9. CONVERTIBLE NOTE, SERIES D PREFERRED STOCK, AND SERIES D-1 PREFERRED STOCK

Financing Transaction

On November 14, 2014, the Company entered into the November 2014 Purchase Agreement with the Investor. Pursuant to the terms of the November 2014 Purchase Agreement, the Company sold to the Investor (i) $3,000,000 (3,000 shares) of Series D Convertible Preferred Stock, (ii) $32,000,000 original principal amount of senior secured convertible notes, and (iii) Warrants to purchase up to 7,777,778 shares of the Company’s common stock, par value $0.0001 per share. At the closing of the sale of the Financing, the Company entered into (i) a registration rights agreement with the Investor, (ii) a security and pledge agreement in favor of the collateral agent for the Investor, and (iii) certain account control agreements with several banks with respect to restricted control accounts described in the November 2014 Purchase Agreement. The Financing closed on November 19, 2014.

Proceeds Received and Restricted Cash

The Company received gross proceeds of approximately $4.5 million at Closing. The remaining $30.5 million of gross proceeds from the Financing was deposited on the Closing Date by the Investor into restricted control account. $2.5 million of these restricted proceeds were released on December 22, 2014 to the Company. Thereafter, additional funds from the control account could be released to the Company (i) in connection with certain conversions of the Notes and redemptions of the Series D Preferred Stock, and (ii) up to $6 million in any 90 day period, provided that the Company meets certain equity conditions. During the year ended December 31, 2015, $9.25 million was released to the Company.

Description of the Notes and Series D Preferred Stock

The Notes rank senior to the Company’s outstanding and future indebtedness, except for certain existing permitted indebtedness of the Company. The Notes are secured by a first priority perfected security interest in all of the Company’s and its subsidiaries’ current and future assets (including a pledge of the stock of the Company’s subsidiaries), other than those assets which already secure the Company’s existing permitted indebtedness. So long as any Notes remain outstanding, the Company and its subsidiaries will not incur any new indebtedness, except for permitted indebtedness under the Notes, or create any new encumbrances on the Company’s or its subsidiaries’ assets, except for permitted liens under the Notes. Under certain circumstances, subsidiaries of the Company will be required to guarantee the Company’s obligations under the Notes. The Series D Preferred Stock ranks pari passu with the Company’s existing Series A Preferred Stock with respect to dividends and rights upon liquidation. The Series D Preferred Stock ranked senior to the Company’s Common Stock with respect to dividends and rights upon liquidation. The Series D Preferred Stock ranked junior to all existing and future indebtedness. The Series D Preferred Stock was unsecured.

Unless earlier converted or redeemed, the Notes mature 42 months after the Closing Date (the “Maturity Date"), subject to the right of the Investors to extend the date under certain circumstances. The Series D Preferred Stock had no fixed maturity date or mandatory redemption date.

All amounts due under the Notes and the Series D Preferred Stock are convertible at any time, in whole or in part, at the option of the Investor into shares of Common Stock at a fixed conversion price, which is subject to adjustment for stock splits, stock dividends, combinations or similar events. The Notes and the Series D Preferred Stock are convertible into shares of Common Stock at the initial price of $2.25 per share (the "Conversion Price"). If and whenever on or after the Closing Date, the Company issues or sells any shares of Common Stock for a consideration per share (the "New Issuance Price"), less than a price equal to the Conversion Price in effect immediately prior to such issuance or sale (a "Dilutive Issuance"), then, immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price.

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The Company may redeem all, but not less than all, of the Notes or the Series D Preferred Stock at any time after 30 calendar days after the earlier of (A) the date that a resale registration statement for the resale of a portion of the Common Stock underlying the Notes and Warrants becomes effective or (B) the date that the shares of Common Stock underlying the Notes and Warrants are eligible for resale under Rule 144, provided that the Company meets certain equity conditions. In the case of an optional redemption of Notes or Series D Preferred Stock by the Company, the Notes shall be redeemed in cash at a price with a redemption premium of 120% calculated by the formula specified in the Notes and the Series D Preferred Stock. The Company is required to provide holders of the Notes or Series D Preferred Stock with at least 90 trading days prior notice of its election to redeem the Notes or the Series D Preferred Stock.

The Investor has the option to convert a portion of the Notes or the Series D Preferred Stock into shares of Common Stock at an "Alternate Conversion Price" equal to the lowest of (i) the Conversion Price then in effect or (ii) 85% of the quotient of the sum of the volume-weighted average price of the Common Stock for each of the three lowest trading days during the ten consecutive trading day period ending and including the trading day immediately prior to the date of the applicable conversion date, divided by three. During the year ended December 31, 2015, the Investor exercised its option to convert 2,305 Preferred Shares, representing a value of $2,305,000, at an Alternate Conversion Price resulting in the issuance of 8,318,690 Common Shares.

The Company agreed to make amortization payments with respect to the principal amount of the Notes and the liquidation value of the Series D Preferred Stock in shares of its Common Stock, subject to the satisfaction of certain equity conditions, or at the Company's option, in cash or a combination of shares of Common Stock and cash, in equal installments payable once every month. Per the terms of the Financing, the Company was required to make pre-payments on the monthly amortization payments twenty trading days prior to the installment due date. During the year ended December 31, 2015, the Company made installment payments towards the Series D Preferred Stock totaling $565,341, resulting in the issuance of 1,465,972 shares of common stock. Amortization payments were first applied to the redemption of shares of Series D Preferred Stock until all shares of the Series D Preferred Stock were redeemed. Thereafter, amortization payments were applied to pay principal and interest on the Notes. Prior to the Note cancellation further described below, the Company made installment payments towards the Notes totaling $3,703,293, resulting in the issuance of 21,424,686 shares of common stock during the year ended December 31, 2015.

For amortization payments paid in shares of Common Stock, the number of shares of Common Stock that shall be issued as an installment conversion amount shall be determined based on an installment conversion price (the "Installment Conversion Price") of the lowest of (i) the Conversion Price then in effect or (ii) 85% of the quotient of the sum of the volume-weighted average price of the Common Stock for each of the five lowest trading days during the 20 consecutive trading day period ending and including the trading day immediately prior to the applicable installment date, divided by five.

The Company classified the Series D Preferred Stock as a liability pursuant to ASC 480 at December 31, 2014 due to the structure of the financing agreement, whereby the Company had an unconditional obligation that the Company settled by issuing a variable number of common shares with a monetary value that was fixed and known at inception. There are 0 shares of Series D Preferred Stock outstanding as of December 31, 2015.

The Investor could elect to defer the payment of the installment amount due on any installment dates, in whole or in part, to another installment date, in which case the amount deferred became part of such subsequent installment date and continued to accrue interest and dividends as applicable. During an installment period, the Investor could elect to accelerate the amortization of the Notes or the Series D Preferred Stock at the Installment Conversion Price of the current installment date if, in the aggregate, all such accelerations in such period did not exceed five times the installment amount. Such accelerated amounts were payable in the Company's common stock. During the year ended

December 31, 2015, the Investor elected to defer $4,015,849 of amortization payments to a later installment date. As a result of the deferral, $352,204 of interest expense was added to the principal balance of the Notes. Prior to the Note cancellation further described below, the Investor elected to accelerate $5,145,375 of the Notes, resulting in the issuance of 12,651,059 shares of common stock during the year ended December 31, 2015.

The Notes bear interest at a rate of 7% per annum, subject to increase to 15% per annum upon the occurrence and continuance of an event of default. Holders of the Series D Preferred Stock were entitled to receive dividends in the amount of 7% per annum, subject to increase to 15% per annum upon the occurrence and continuance of certain events of default. Interest on the Notes and dividends on the Series D Preferred Stock were payable monthly in shares of Common Stock or cash, at the Company’s option. Interest on the Notes and dividends on the Series D Preferred Stock was computed on the basis of a 360-day year and twelve 30-day months and was payable in arrears monthly and was compounded monthly. Prior to the Note cancellation further described below, the Company paid dividends in the amount of $3,572 on the Series D Preferred Stock,

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resulting in the issuance of 11,241 shares of common stock, and interest in the amount of $984,632 on the Note, resulting in the issuance of 3,420,461 shares of common stock during the year ended December 31, 2015.

The Notes and the Series D Preferred Stock contain standard and customary events of default including but not limited to: (i) failure to make payments when due under the Notes and the Series D Preferred Stock; (ii) bankruptcy or insolvency of the Company; and (iii) certain failures (in the case of the Notes) to comply with the requirements under the registration rights agreement. If there is an event of default, a holder of the Notes or the Series D Preferred Stock may require the Company to redeem all or any portion of the Notes or the Series D Preferred Stock (including all accrued and unpaid interest and dividends and all interest and dividends that would have accrued through the Maturity Date), in cash, at a price equal to the greater of: (i) up to 125% of the amount being redeemed, depending on the nature of the default, or (ii) the product of (A) the conversion rate in effect at such time multiplied by (B) the product of (1) up to 125%, depending on the nature of the default, multiplied by (2) the highest closing sale price of the Common Stock on any trading day during the period beginning on the date immediately before the event of default and ending on the date of redemption. Additionally, if there is an event of default, a holder of the Notes or the Series D Preferred Stock may convert all or any portion of the Notes or the Series D Preferred Stock into shares of Common Stock. In such event, the conversion price would be the lowest of (i) the Conversion Price then in effect or (ii) 85% of the quotient of the sum of the volume-weighted average price of the Common Stock for each of the three lowest trading days during the 10 consecutive trading day period ending and including the trading day immediately prior to the date of the applicable conversion date, divided by three.

Pursuant to a number of factors outlined in ASC Topic 815, Derivatives and Hedging, the conversion options in the Notes were deemed to include an embedded derivative that required bifurcation and separate accounting. As such, the Company ascertained the value of the conversion option as if separate from the convertible issuance and appropriately recorded that value as a derivative liability. At December 31, 2014, the derivative liability value associated with the Notes was $17.4 million. The derivative associated with the Notes approximates management's estimate of the fair value of the embedded derivative liability at December 31, 2014 based on using a Monte Carlo simulation following a Geometric Brownian Motion with the following assumptions: annual volatility of 50%, present value discount rate of 12%, dividend yield of 0%, and remaining life of 3.4 years.

Cancellation of the Notes

On September 4, 2015, the Company entered into a Cancellation and Waiver Agreement (the "Cancellation Agreement") with the Investor. Pursuant to the Cancellation Agreement, the Company agreed to retire all $21.2 million of the outstanding Notes as of September 4, 2015. Under the terms of the Cancellation Agreement, the Company will pay the Investor an aggregate of $25.1 million to retire all $21.2 million aggregate principal amount of Notes outstanding as of September 4, 2015. $18.8 million was paid immediately to the Investor and was funded from the Company's restricted control account relating to the Notes. The remaining $6.3 million (the "Investor Payable") was to be paid in two installments; $2.4 million was due on October 19, 2015 and $3.9 million was due on December 4, 2015.

The Investor Payable was convertible only upon an event of default, as defined. Upon an event of default, the Investor Payable would become share-settled debt that is subject to ASC 480. As a result, the Company recorded the Investor Payable at fair value as of September 4, 2015 and recorded a debt discount on the Investor Payable of $0.1 million.

A net loss on extinguishment of the Notes and related embedded derivative of $11.6 million was recorded to "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations for the year ended December 31, 2015.

Amendment No. 1 to the Cancellation Agreement

On October 8, 2015, the Company and the Investor entered into Amendment No. 1 to the Cancellation Agreement ("Amendment No. 1"). Amendment No. 1 provides that: (1) the Company will not make the October 19 payment to retire the $2.4 million portion of the Investor Payable; (2) the December 4 payment was modified from a payment of $3.9 million to a payment of $2.8 million on December 20, 2015 (the “Investor Payable - Amendment 1”); (3) $3.5 million of the Investor Payable has been reinstated to the previously outstanding Notes (the “Reinstated Notes”). This $3.5 million portion of the Reinstated Notes shall remain outstanding with all the current and existing rights and terms from the previously outstanding Notes, including, without limitation, existing rights of conversion and redemption.

During the year ended December 31, 2015, the Company made installment payments towards the Reinstated Notes totaling $853,659, resulting in the issuance of 6,959,180 shares of common stock. The Investor elected to accelerate

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$1,001,000 of the Reinstated Notes, resulting in the issuance of 10,536,971 shares of common stock during the year ended December 31, 2015.

The Investor had available to them a new conversion price beginning on November 4, 2015 as a result of the Series E Preferred Stock transaction further described in Note 11. The Investor could elect to convert a portion of the Reinstated Notes into shares of common stock using a conversion price equal to 80% of the average of the two lowest volume weighted average prices of our common stock for the ten consecutive trading day period prior to each specific conversion date (the "Variable Price"). During the year ended December 31, 2015, the Investor elected to convert $1,634,992 of the Reinstated Notes using the Variable Price, resulting in the issuance of 16,981,640 shares of common stock. As of December 31, 2015, $52,500 of the Reinstated Notes remain outstanding.

The Company paid interest in the amount of $35,217 on the Reinstated Notes, resulting in the issuance of 314,888 shares of common stock during the year ended December 31, 2015.

Pursuant to a number of factors outlined in ASC Topic 815, Derivatives and Hedging, the conversion options in the Reinstated Notes were deemed to include an embedded derivative that required bifurcation and separate accounting. As such, the Company ascertained the value of the conversion option as if separate from the convertible issuance and appropriately recorded that value as a derivative liability. On October 8, 2015, a derivative liability and a corresponding debt discount in the amount of $4,808,800 were recorded. The debt discount is being charged to interest expense ratably over the life of the Reinstated Notes.

The derivative liability associated with the Reinstated Notes is subject to revaluation on a quarterly basis to reflect the market value change of the embedded conversion option. At December 31, 2015, the Company conducted a fair value assessment of the embedded derivative associated with the Reinstated Notes. As a result of the fair value assessment, the Company recorded a $4,747,800 gain as "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations to properly reflect the fair value of the embedded derivative of $61,000 as of December 31, 2015.

The derivative associated with the Reinstated Notes approximates management’s estimate of the fair value of the embedded derivative liability at October 8, 2015 and December 31, 2015 based on using a Monte Carlo simulation following a Geometric Brownian Motion. The assumptions used as of October 8, 2015 were annual volatility of 37%, present value discount rate of 12%, dividend yield of 0%, and remaining life of 2.61 years. The assumptions used as of December 31, 2015 were annual volatility of 34%, present value discount rate of 12%, dividend yield of 0%, and remaining life of 2.39 years.

A net loss on extinguishment of $27,100 was recorded to "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations as a result of Amendment No. 1 for the year ended December 31, 2015.

Amendment No. 2 to the Cancellation Agreement

On November 22, 2015 the Company and the Investor entered into Amendment No. 2 to the Cancellation Agreement ("Amendment No. 2). Amendment No. 2 provides that: (1) the Investor Payable - Amendment 1 has been modified. The Company now has agreed to make a payment of $1.0 million on December 21, 2015 (the “Final Investor Payable”); (2) $1.8 million of the Investor Payable - Amendment 1 has been reinstated to the previously outstanding Notes (the “November 2015 Reinstated Notes”). Except as provided below in item (4), this $1.8 million portion of the November 2015 Reinstated Notes will remain outstanding with all its current and existing rights and terms from the previously outstanding Notes including, without limitation, existing rights of conversion and redemption; (3) The Investor has agreed to release as of January 15, 2016 the security interest on that portion of the collateral securing the previously outstanding Notes that constitutes accounts receivable of the Company. The Investor has also agreed to release as of February 8, 2016 the security interest in the remaining collateral securing the previously outstanding Notes; (4) With respect to the $1.8 million November 2015 Reinstated Notes only, the Investor has agreed to delete Section 8 of the November 2014 Purchase Agreement. As such, the $1.8 million November 2015 Reinstated Notes will not have installment payments, accelerations, or deferrals.

During the year ended December 31, 2015, the Investor elected to convert $1.8 million of the November 2015 Reinstated Notes using the Variable Price, resulting in the issuance of 18,644,996 shares of common stock. As of December 31, 2015, $0 of the November 2015 Reinstated Notes remain outstanding.

The Company paid interest in the amount of $3,003 on the November 2015 Reinstated Notes, resulting in the issuance of 30,890 shares of common stock during the year ended December 31, 2015.

Pursuant to a number of factors outlined in ASC Topic 815, Derivatives and Hedging, the conversion options in the November 2015 Reinstated Notes were deemed to include an embedded derivative that required bifurcation and separate accounting. As such, the Company ascertained the value of the conversion option as if separate from the convertible issuance and appropriately recorded that value as a derivative liability. On November 22, 2015, a derivative liability and a corresponding debt discount in the amount of $2.2 million were recorded. The debt discount of $2.2 million was charged to interest expense. As of December 31, 2015, the value of the derivative liability associated with the November 2015 Reinstated Notes is $0 as the November 2015 Reinstated Notes were fully converted as of December 31, 2015. As such, a gain of $2.2 million was recorded to "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations for the year ended December 31, 2015.

The derivative associated with the November 2015 Reinstated Notes approximates management's estimate of the fair value of the embedded derivative liability at the closing date based on using a Monte Carlo simulation following a Geometric Brownian Motion with the following assumptions: annual volatility of 55%, present value discount rate of 12%, dividend yield of 0%, and a life of 2.49 years.

A net loss on extinguishment of $15,700 was recorded to "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations as a result of Amendment No. 2 for the year ended December 31, 2015.

The $1,000,000 Final Investor Payable was paid to the Investor on December 21, 2015.

Description of Series D-1 Preferred Stock

On February 19, 2015, the Company entered into a securities purchase agreement to issue 2,500 shares of Series D-1 Preferred Stock to an investor in exchange for $2,500,000. The proceeds were received on the closing date, February 25, 2015.

All amounts due under the Series D-1 Preferred Stock were convertible at any time, in whole or in part, at the option of the investor into shares of Common Stock at a fixed conversion price, which was subject to adjustment for stock splits, stock dividends, combinations or similar events. The Series D-1 Preferred Stock was convertible into shares of Common Stock at the initial price of $2.31 per share. If and whenever on or after the closing date, the Company issues or sells any shares of Common Stock for a consideration per share less than a price equal to the conversion price in effect immediately prior to such issuance or sale, the conversion price, then in effect, shall be reduced to an amount equal to the new issuance price immediately after the dilutive issuance.

The investor had the option to convert a portion of the Series D-1 Preferred Stock into shares of Common Stock at a "D-1 Alternate Conversion Price" equal to the lowest of (i) $2.31 per share or (ii) 85% of the lowest volume-weighted average price of the Common Stock on any trading day during the five consecutive trading day period ending and including the trading day immediately prior to the date of the applicable conversion date. During the year ended December 31, 2015, the investor exercised its option to convert 2,500 Preferred Shares, representing a value of $2,500,000, at a D-1 Alternate Conversion Price resulting in the issuance of 2,305,824 Common Shares.

Holders of the Series D-1 Preferred Stock were entitled to receive dividends in the amount of 7% per annum, subject to increase to 15% per annum upon the occurrence and continuance of certain events of default. Dividends on the Series D-1 Preferred Stock were payable monthly in shares of Common Stock or cash, at the Company's option. Dividends on the Series D-1 Preferred Stock were computed on the basis of a 360-day year and 12 30-day months, were compounded and payable in arrears monthly. During the year ended December 31, 2015, the Company paid dividends in the amount of $6,944 on the Series D-1 Preferred Stock, resulting in the issuance of 3,896 shares of common stock.

The Company classified the Series D-1 Preferred Stock as a liability pursuant to ASC 480 on the closing date due to the structure of the financing agreement, whereby the Company had an unconditional obligation that the Company may settle by issuing a variable number of common shares with a monetary value that is fixed and known at inception. There were 0 shares of Series D-1 Preferred Stock outstanding as of December 31, 2015.

Pursuant to a number of factors outlined in ASC Topic 815, Derivatives and Hedging, the conversion options in the Series D-1 Preferred Stock were deemed to include an embedded derivative that required bifurcation and separate accounting. As such, the Company ascertained the value of the conversion option as if separate from the convertible issuance and appropriately recorded that value as a derivative liability. At closing, a derivative liability and a corresponding debt discount in the amount of $3.4 million were recorded. The debt discount of $3.4 million was charged to interest expense. As of December 31, 2015, the

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value of the derivative liability associated with the Series D-1 Preferred Stock was $0 as the Series D-1 Preferred Stock was fully converted as of December 31, 2015.

A net gain of $2.7 million was recorded to "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations for the year ended December 31, 2015 upon extinguishment of the D-1 Preferred Stock liability and the related embedded derivative.

The derivative associated with the Series D-1 Preferred Stock approximates management’s estimate of the fair value of the embedded derivative liability at the closing date based on using a Monte Carlo simulation following a Geometric Brownian Motion with the following assumptions: annual volatility of 45%, present value discount rate of 12%, dividend yield of 0%, and a life of 0.2 years.

Embedded derivative associated with the Series D Preferred Stock

Pursuant to a number of factors outlined in ASC Topic 815, Derivatives and Hedging, the conversion options in the Series D Preferred Stock were deemed to include an embedded derivative that required bifurcation and separate accounting. As such, the Company ascertained the value of the conversion option as if separate from the convertible issuance and appropriately recorded that value as a derivative liability. At December 31, 2014, the derivative liability value associated with the Series D Preferred Stock was $0.4 million. As of December 31, 2015, the value of the derivative liability associated with the Series D Preferred Stock was $0 as the Series D Preferred Stock was fully converted as of December 31, 2015. A gain of $0.4 million was recorded to "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations for the year ended December 31, 2015.

The derivative associated with the Series D Preferred Stock approximates management’s estimate of the fair value of the embedded derivative liability at December 31, 2014 based on using a Monte Carlo simulation following a Geometric Brownian Motion with the following assumptions: annual volatility of 50%, present value discount rate of 12%, dividend yield of 0%, and remaining life of 3.4 years.

Description of the Warrants Associated with the Notes, Series D Preferred Stock, and Series D-1 Preferred Stock

The warrants associated with the Notes and Series D Preferred Stock ("November Warrants") entitled the Investor to purchase, in the aggregate, up to 7,777,778 shares of Common Stock. The November Warrants were exercisable at any time on or after the six month anniversary of the closing date through the fifth anniversary of such date. The November Warrants were exercisable at an initial exercise price equal to $2.25 per share. The warrants associated with the Series D-1 Preferred Stock (the "February Warrants") entitled the Investor to purchase, in the aggregate, up to 541,126 shares of Common Stock. The February Warrants were exercisable at any time on or after the six month anniversary of the closing date through the fifth anniversary of such date. The February Warrants were exercisable at an initial exercise price equal to $2.31 per share. The exercise price of the November and February Warrants was subject to adjustment for stock splits, stock dividends, combinations or similar events. In addition, the exercise price was also subject to a “full ratchet” anti-dilution adjustment, subject to customary exceptions in the event the Company issued securities at a price lower than the then applicable exercise price.

On July 22, 2015, the Company entered into an Amendment and Exchange Agreement (the “Exchange Agreement”), between the Company and the Investor. Pursuant to the Exchange Agreement, the November and February Warrants were canceled, and the Company issued to the Investor a right to receive a fixed number of shares of common stock of the Company in accordance with the terms of a Right to Receive Common Stock dated July 22, 2015 (the “Right”).

The Right obligated the Company to issue to the Investor (without the payment of any additional consideration) an aggregate of 8.3 million shares of Common Stock (the "Right Shares"). The Right was immediately exercisable for 1.5 million Right Shares. The Right was not exercisable for the remaining 6.8 million Right Shares until November 22, 2015. In the Exchange Agreement, the Holder agreed to limit sales of the Right Shares (i) during the period until November 22, 2015 to 750,000 shares during any 30-day period, and (ii) during the six-month period from November 22, 2015 through May 22, 2016 to approximately 1.1 million shares during any 30-day period. In an amendment to the Exchange Agreement on October 8, 2015, the parties agreed to eliminate such exercise and sale limitations. The remaining 6.8 million share portion of the Right became exercisable and such shares were not subject to such previous contractual restrictions on sales. During the year ended December 31, 2015, the Investor had exercised their Right to receive and the Company had delivered all 8.3 million shares of common stock.

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Pursuant to ASC 815, the Company was required to report the value of the November and February Warrants as a liability at fair value and record the changes in the fair value of the warrant liability as a gain or loss in its statements of operations due to the price-based anti-dilution provisions. The Company utilized the Monte Carlo simulation valuation method to value the liability classified warrants. At December 31, 2014, the value of the liability associated with the November Warrants was calculated to be $15.9 million. At February 25, 2015, the closing date of the February Warrants, the value of the liability associated with the February Warrants was calculated to be $0.9 million.

As a result of the Exchange Agreement and cancellation of the November and February warrants, a net gain on extinguishment of the warrant liability associated with the November and February Warrants of $13.9 million was recorded to "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations for year ended December 31, 2015.

The fair value of the November warrants as of December 31, 2014 was determined using Level 3 inputs. Inherent in the Monte Carlo valuation model are assumptions related to expected stock-price volatility, expected life, risk-free interest rate and dividend yield. The Company estimated the volatility of its common stock to be 64% based on 5.4 years, the expected remaining life of the warrants. The risk-free interest rate of 1.66% was based on the U.S. Treasury zero-coupon yield curve on the grant date for a maturity similar to the expected remaining life of the warrants. The dividend rate was based on the historical rate, which the Company anticipated to remain at zero.

The fair value of the February Warrants as of February 25, 2015 was determined using Level 3 inputs. Inherent in the Monte Carlo valuation model are assumptions related to expected stock-price volatility, expected life, risk-free interest rate and dividend yield. The Company estimated the volatility of its common stock to be 69% based on the expected remaining life of the February Warrants, 5.5 years. The risk-free interest rate of 1.47% was based on the U.S. Treasury zero-coupon yield curve on the grant date for a maturity similar to the expected remaining life of the February Warrants. The dividend rate was based on the historical rate, which the Company anticipates to remain at zero.

NOTE 10. SEPTEMBER 2015 CONVERTIBLE NOTES

On September 4, 2015, the Company entered into a note purchase agreement between the Company and the Lenders. Pursuant to the new loan agreement, the Company issued to the Lenders $1.5 million original principal amount of secured subordinated convertible notes on September 4, 2015, and an additional $0.5 million original principal amount of secured subordinated convertible notes on September 28, 2015 (collectively, the “September 2015 Convertible Notes”).

All amounts due under the September 2015 Convertible Notes are convertible at any time, in whole or in part, at the option of the Lenders into shares of Common Stock at a fixed conversion price, which is subject to adjustment for stock splits, stock dividends, combinations or similar events, of $0.12 per share (the “Conversion Price”). The Company, however, was prohibited from issuing shares of Common Stock pursuant to the September 2015 Convertible Notes unless stockholder approval of such issuance of securities is obtained as required by applicable NASDAQ listing rules. The Company received stockholder approval of such share issuances at a special stockholders meeting held on December 18, 2015. This provision resulted in a contingent beneficial conversion feature that was recognized once the contingency was resolved based on its intrinsic value at the commitment date. Accordingly, a beneficial conversion feature in the amount of $1.38 million was recorded as a debt discount on December 18, 2015. The debt discount will be recognized as additional interest expense over the life of the September 2015 Convertible Notes.

There are no registration rights applicable to the September 2015 Convertible Notes. Accordingly, any shares of Common Stock issued upon conversion of the September 2015 Convertible Notes will be restricted and may only be sold in compliance with Rule 144 or in accordance with another exemption from registration.

Unless earlier converted or redeemed, the September 2015 Convertible Notes will mature on September 4, 2016 (the "Maturity Date"). The September 2015 Convertible Notes bear interest at a rate of 8% per annum. Principal and interest on the September 2015 Convertible Notes is payable on the Maturity Date. The Company accrued $49,000 of interest during the year ended December 31, 2015.

The September 2015 Convertible Notes are secured by a security interest in substantially all of the Company's assets (other than the Company's Thornton, Colorado real estate assets which currently secure other outstanding indebtedness). The security interest for the September 2015 Convertible Notes will be subordinated to the security interest securing the Convertible Notes unless and until the Convertible Notes are completely retired.

NOTE 11. SERIES E PREFERRED STOCK AND THE COMMITTED EQUITY LINE

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Series E Preferred Stock

On November 4, 2015, the Company entered into a securities purchase agreement with a Private Investor to issue 2,800 shares of Series E Preferred Stock to an investor in exchange for $2,800,000. The proceeds were fully received upon effectiveness of the Company’s registration statement covering the re-sale of the common stock underlying the Series E Preferred Stock in December of 2015.

Shares of the Series E Preferred Stock (including the amount of any accrued and unpaid dividends thereon) are convertible at the option of the holder into common stock at a variable conversion price equal to 80% of the average of the two lowest volume weighted average prices of the Company's common stock for the ten consecutive trading day period prior to the conversion date. If certain defined default events occur, then the conversion price would thereafter be reduced (and only reduced), to equal 70% of the average of the two lowest VWAPs of the Company's common stock for the twenty consecutive trading day period prior to the conversion date. During the year ended December 31, 2015, the Private Investor exercised their option to convert 477 Series E Preferred Shares, representing a value of $477,415, resulting in the issuance of 4,957,585 shares of common stock.

Holders of the Series E Preferred Stock will be entitled to dividends in the amount of 7% per annum, payable when, as and if declared by the Board of Directors in its discretion. During the year ended December 31, 2015, the Company paid dividends in the amount of $4,085 on the Series E Preferred Stock, resulting in the issuance of 42,415 shares of common stock.

The Company has issued 360,000 shares of common stock to the Private Investor as a commitment fee relating to the Series E Preferred Stock. Costs associated with the Series E Preferred Stock, such as legal fees and commitment shares are capitalized and reported as deferred financing costs on the Consolidated Balance Sheets. The total gross debt issuance cost incurred by the Company related to the Series E Preferred Stock was $104,000. These debt issuance costs will be recognized as additional interest expense over the life of the Series E Preferred Stock.

At any time after March 31, 2016, the Private Investor will have the option to redeem for cash all or any portion of the outstanding shares of the Series E Preferred Stock at a price per share equal to $1,250 plus any accrued but unpaid dividends thereon.

At any time after the third anniversary of the date of the initial issuance of Series E Preferred Stock, the Company will have the option to redeem for cash all outstanding shares of the Series E Preferred Stock at a price per share equal to $1,250 plus any accrued but unpaid dividends thereon.

The Company classified the Series E Preferred Stock as a liability pursuant to ASC 480 on the closing date due to the structure of the financing agreement, whereby the Company has an unconditional obligation that the Company may settle by issuing a variable number of common shares with a monetary value that is fixed and known at inception. There are 2,323 shares of Series E Preferred Stock outstanding as of December 31, 2015.

Pursuant to a number of factors outlined in ASC Topic 815, Derivatives and Hedging, the conversion option in the Series E Preferred Stock were deemed to include an embedded derivative that required bifurcation and separate accounting. As such, the Company ascertained the value of the conversion option as if separate from the convertible issuance and appropriately recorded that value as a derivative liability. At closing, a derivative liability and a corresponding debt discount in the amount of $1,485,000 was recorded. The debt discount will be charged to interest expense ratably over the life of the Series E Preferred Stock.

The derivative liability associated with the Series E Preferred Stock is subject to revaluation on a quarterly basis to reflect the market value change of the embedded conversion option. At December 31, 2015, the Company conducted a fair value assessment of the embedded derivative associated with the Series E Preferred Stock. As a result of the fair value assessment, the Company recorded a $932,000 gain as "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in the Consolidated Statements of Operations to properly reflect the fair value of the embedded derivative of $553,000 as of December 31, 2015.

The derivative associated with the Series E Preferred Stock approximates management’s estimate of the fair value of the embedded derivative liability at December 31, 2015 based on using a Monte Carlo simulation following a Geometric Brownian Motion with the following assumptions: annual volatility of 54%, present value discount rate of 12% and dividend yield of 0%.

The Committed Equity Line

On November 10, 2015, the Company and the Private Investor entered into a committed equity line purchase agreement (the "CEL"). Under the terms and subject to the conditions of the CEL purchase agreement, at its option the Company has the right to sell to the Private Investor, and the Private Investor is obligated to purchase from the Company, up to $32.2 million of the Company's common stock, subject to certain limitations, from time to time, over the 36-month period commencing on December 18, 2015, the date that the registration statement was declared effective by the SEC.

From time to time, the Company may direct the Private Investor, at its sole discretion and subject to certain conditions, to purchase an amount of shares of common stock up to the lesser of (i) $1,000,000 or (ii) 300% of the average daily trading volume of the Company's common stock over the preceding ten trading day period. The per share purchase price for shares of common stock to be sold by the Company under the CEL purchase agreement shall be equal to 80% of the average of the two lowest VWAPs of the common stock for the ten consecutive trading day period prior to the purchase date. During the year ended December 31, 2015, the Company directed the Private Investor to purchase $2,000,000 of common stock which resulted in the issuance of 16,850,923 shares of common stock.

The Company may not direct the Private Investor to purchase shares of common stock more frequently than once each ten business days. The Company's sales of shares of common stock to the Private Investor under the CEL purchase agreement are limited to no more than the number of shares that would result in the beneficial ownership by the Private Investor and its affiliates, at any single point in time, of more than 9.99% of the Company's then outstanding shares of common stock.

As consideration for entering into the CEL purchase agreement, the Company has agreed to issue to the Private Investor 2,640,000 shares of common stock (the "Commitment Shares"). The Commitment Shares will be issued to the Private Investor in four increments which commenced upon the date that the registration statement was declared effective by the SEC. During the year ended December 31, 2015, the Company issued 500,000 Commitment Shares to the Private Investor.

NOTE 12. MAKE-WHOLE DIVIDEND LIABILITY

In June 2013, the Company entered into a Series A Preferred Stock purchase agreement. Holders of Series A Preferred Stock are entitled to cumulative dividends at a rate of 8.0% per annum, with the dividend rate being indexed to the Company's stock price and subject to adjustment. Conversion or redemption of the Series A Preferred Stock within 4 years of issuance requires the Company pay a make-whole dividend to the holders, whereby dividends for the full four year period are to be paid in cash or common stock (valued at 10% below market price).

In October 2013, the Company entered into a Series B Preferred Stock purchase agreement. Holders of Series B Preferred Stock are entitled to cumulative dividends at a rate of 5.75% per annum, with the dividend rate being indexed to the Company's stock price and subject to adjustment. Conversion or redemption of the Series B Preferred Stock within 5 years of issuance requires the Company pay a make-whole dividend to the holders, whereby dividends for the full five year period are to be paid in cash or common stock (valued at 8% below market price, but not to exceed the lowest closing price paid during the applicable measurement period).

In April 2014, the Company entered into a securities purchase agreement to issue 600 shares of Series C Preferred Stock to an investor in exchange for $6.0 million. Holders of Series C Preferred Stock are entitled to cumulative dividends at a rate of 5.75% per annum, when and if declared by the Board of Directors in its sole discretion. The dividends may be paid in cash or in the form of common stock (valued at 8% below market price, but not to exceed 92% of the lowest closing price during the applicable measurement period), at the discretion of the Board of Directors. The dividend rate on the Series C Preferred Stock is indexed to the Company's stock price and subject to adjustment. In addition, the Series C Preferred Stock contains an embedded dividend provision whereby, conversion or redemption of the preferred stock within 5 years of issuance will require dividends for the full five year period to be paid by the Company in cash or common stock (valued at 8% below market price, but not to exceed 92% of the lowest closing price during the applicable measurement period).

The Company concluded the make-whole payments should be characterized as embedded derivatives under ASC 815. See Note 3. Summary of Significant Accounting Policies and Note 13. Stockholders' Equity. Make-whole dividends are expensed at the time of issuance and recorded as "Deemed dividends on Preferred Stock and accretion of warrants" in the Consolidated Statements of Operations and "Make-whole dividend liability" in the Consolidated Balance Sheets. During the year ended December 31, 2014 the Company recorded make-whole dividends of $8.1 million related to Series B and Series C Preferred Stock. The fair value of these dividend liabilities, which are indexed to the Company's common stock, must be evaluated at each period end. The fair value measurements rely primarily on Company-specific inputs and the Company’s own assumptions. With the absence of observable inputs, the Company determined these recurring fair value measurements reside primarily within Level 3 of the fair value hierarchy. Fair value determination required forecasting stock price volatility, expected average annual return and conversion date. As a result of this analysis, during the year ended December 31, 2014, the Company recorded a net increase in fair value of the liability in the amount of $3.5 million, recorded as "Change in fair value of derivatives and gain/(loss) on extinguishment of liabilities, net" in Other Income/(Expense) in the Consolidated Statements of Operations and in the Statement of Cash Flows. During the year ended December 31, 2015, there was no change in the fair value of the make-whole liability from the fair value at December 31, 2014.

At December 31, 2015, there were 212,390 shares of Series A Preferred Shares outstanding. All remaining shares of Series B and Series C Preferred Shares were converted into shares of common stock during 2014. At December 31, 2015, the Company was entitled to redeem the outstanding Series A preferred shares for $1.7 million, plus a make-whole amount of $0.8 million, payable in cash or common shares. The fair value of the make-whole dividend liability for the Series A Preferred Shares, which approximates cash value, was $0.8 million as of December 31, 2015.

NOTE 13. STOCKHOLDERS’ EQUITY

Common Stock

At December 31, 2015, the Company had 450,000,000 shares of common stock, $0.0001 par value, authorized for issuance. Each share of common stock has the right to one vote. As of December 31, 2015, the Company had 155,196,865 shares of common stock outstanding. The Company has not declared or paid any dividends related to its common stock through December 31, 2015.

On August 26, 2014, the Company, a Delaware corporation, filed a Certificate of Amendment with the Secretary of State of the State of Delaware to effect the Reverse Stock Split of the Company's common stock, par value $0.0001 per share at a ratio of one-for-ten . The Certificate of Amendment did not change the number of authorized shares, or the par value, of the Company’s common stock. The Certificate of Amendment provides that every ten shares of the Company’s issued and outstanding common stock were automatically combined into one issued and outstanding share of the Company’s common stock. All shares and per share amounts in the financial statements and accompanying notes have been retroactively adjusted to give effect to the Reverse Stock Split.

TFG Radiant Purchases of Common Stock

In August 2011, the Company completed a strategic alliance with TFG Radiant. As part of this strategic alliance, TFG Radiant acquired 640,000 shares of the Company's common stock at a price of $11.50 per share or $7,360,000 in the aggregate. The closing price of the Company's common stock on August 12, 2011 was $7.30. In addition, TFG Radiant received an option to acquire an additional 950,000 shares of the Company's common stock at an exercise price of $15.50 per share. The option was approved by the Company's stockholders on October 27, 2011. TFG Radiant could not exercise this option unless, and until, TFG Radiant meets a specified milestone associated with the construction of the first East Asia FAB. This option expired on February 12, 2014.

In January 2012, TFG Radiant agreed to purchase 806,739 shares of the Company's common stock owned by Norsk Hydro for $4 million, or approximately $5.00 per share. The TFG Radiant purchase of these shares closed on March 30, 2012.

On April 6, 2015, the Company entered into a securities purchase agreement with TFG Radiant for a private placement of a total of 1,000,000 shares of the Company’s common stock which resulted in gross proceeds of approximately $1 million to the Company. The transaction closed on April 17, 2015.

On June 10, 2015, the Company entered into a securities purchase agreement with TFG Radiant for a private placement of a total of 1,000,000 shares of the Company’s common stock which resulted in gross proceeds of approximately $1 million to the Company. The transaction closed on July 10, 2015. As of December 31, 2015, TFG Radiant's ownership was approximately 4% of the Company's outstanding Common Stock.

Private Placements of Common Stock

On July 29, 2014, the Company entered into a securities purchase agreement with SHTARD Enterprises Ltd. Pursuant to the terms of the Purchase Agreement, the Company issued and sold to SHTARD 400,000 shares of the Company’s common stock in the aggregate original amount of $1,320,000 or $3.30 per share. On August 11, 2014, SHTARD purchased an additional 800,000 shares from the Company at $3.30 per share or $2,640,000.

On August 29, 2014, the Company entered into a securities purchase agreement with Seng Wei Seow and TFG Radiant for a private placement of a total of 3,115,618 shares of the Company’s common stock, which resulted in gross proceeds of approximately $8,000,000 to the Company. The private placement took place in two tranches. In the first tranche, which closed on August 29, 2014, the Company issued (i) 845,309 shares of Common Stock to Seow and (ii) 845,309 shares of Common Stock to TFG Radiant, all at a price of $2.366 per share, resulting in gross proceeds of approximately $4,000,000 to the Company. For the second tranche, which closed on November 11, 2014, the Company issued 1,425,000 shares of Common Stock to TFG Radiant at a price of $2.80 per share, resulting in gross proceeds of approximately $4,000,000 to the Company.

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Shelf Registration

In October 2014, the Company filed a “shelf” Registration Statement on Form S-3 with the SEC. With the shelf registration, the Company may from time to time sell common stock, preferred stock, warrants or some combination in one or more offerings for up to $25.0 million. The registration became effective October 16, 2014. This shelf registration replaces the Company's prior shelf registration statement. As of December 31, 2015, approximately $22.0 million was unused on the shelf registration.

Preferred Stock

At December 31, 2015, the Company had 25,000,000 shares of preferred stock, $0.0001 par value, authorized for issuance. Preferred stock may be issued in classes or series. Designations, powers, preferences, rights, qualifications, limitations and restrictions are determined by the Company’s Board of Directors. 750,000 shares have been designated as Series A preferred stock, 2,000 shares have been designated for Series B-1 and B-2 preferred stock, 690 shares have been designated as Series C preferred stock, 3,000 shares have been designated as Series D preferred stock, 2,500 shares have been designated as Series D-1 preferred stock, and 2,800 shares have been designated as Series E preferred stock. As of December 31, 2015, the Company had 212,390 shares of Series A preferred stock, 0 shares of Series B-1 and B-2 preferred stock, 0 shares of Series C preferred stock, 0 shares of Series D preferred stock, 0 shares of Series D-1 preferred stock, and 2,323 shares of Series E preferred stock, outstanding. The Company has no declared unpaid dividends related to the preferred stock as of December 31, 2015.

Series A preferred stock: In June 2013, the Company entered into a securities purchase agreement with an investor to sell an aggregate of 750,000 shares of Series A Preferred Stock at a price of $8.00 per share, resulting in gross proceeds of $6,000,000. This purchase agreement included warrants to purchase up to 262,500 shares of common stock of the Company. The transfer of cash and securities took place incrementally, the first closing occurring on June 17, 2013 with the transfer of 125,000 shares of Series A preferred stock and a warrant to purchase 43,750 shares of common stock for $1,000,000. The final closing took place in August 2013, with the transfer of 625,000 shares of Series A preferred stock and a warrant to purchase 218,750 shares of common stock for $5,000,000.

Holders of Series A preferred stock are entitled to cumulative dividends at a rate of 8.0% per annum when and if declared by the Board of Directors in its sole discretion. The dividends may be paid in cash or in the form of common stock (valued at 10% below market price, but not to exceed the lowest closing price during the applicable measurement period), at the discretion of the Board of Directors. The dividend rate on the Series A preferred stock is indexed to the Company's stock price and subject to adjustment. In addition, the Series A preferred stock contains a make-whole provision whereby, conversion or redemption of the preferred stock within 4 years of issuance will require dividends for the full four year period to be paid by the Company in cash or common stock (valued at 10% below market price, but not to exceed the lowest closing price during the applicable measurement period). The Series A preferred stock may be converted into shares of common stock at the option of the Company if the closing price of the common stock exceeds $11.60, as adjusted, for 20 consecutive trading days, or by the holder at any time. The Company has the right to redeem the Series A preferred stock at a price of $8.00 per share, plus any accrued and unpaid dividends, plus the make-whole amount (if applicable). At December 31, 2015, the preferred shares were not eligible for conversion to common shares, at the option of the Company. The holder of the preferred shares may convert to common shares at any time, at no cost, at a ratio of 1 preferred share into 1 common share (as adjusted for the Reverse Stock Split, subject to standard ratable anti-dilution adjustments). Upon any conversion (whether at the option of the Company or the holder), the holder is entitled to receive any accrued but unpaid dividends and also any make-whole amount (if applicable). See Note 12. Make-whole dividend liability.

During the twelve months ended December 31, 2015, the holder of the Series A preferred stock converted 0 preferred shares into shares of common stock. During the twelve months ended December 31, 2014, the holder of the Series A preferred stock converted 150,000 preferred shares into 150,000 shares of common stock. As a result of these conversions, the Company paid make-whole dividends in the amount of 104,075 shares of common stock in lieu of a cash payment of $520,000.

Except as otherwise required by law (or with respect to approval of certain actions), the Series A preferred stock shall have no voting rights. Upon any liquidation, dissolution or winding up of the Company, after payment or provision for payment of debts and other liabilities of the Company, the holders of Series A preferred stock shall be entitled to receive, pari passu with any distribution to the holders of common stock of the Company, an amount equal to $8.00 per share of Series A preferred stock plus any accrued and unpaid dividends.

The warrants offered as part of the securities purchase agreement have a three year term and require payment of an exercise price of $9.00 per common share to the Company.

The securities purchase agreement for the Series A preferred stock required the registration statement, filed on August 16, 2013, must be declared effective within 90 days of the filing date. If the registration statement was not declared effective by this

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date, damages of 1% of the total investment amount, or $60,000, plus interest, would have been owed by the Company to the Holder for each month until registration statement effectiveness is reached or the investment amount is repaid in full. The registration statement became effective on August 30, 2013, therefore any potential registration rights liability owed to the Holder by the Company was eliminated as of September 30, 2013.

Series B preferred stock: In October 2013, the Company entered into a securities purchase agreement with an investor to offer up to 1,000 shares of Series B-1 and Series B-2 preferred stock at a price of $10,000 per share, and gross proceeds of up to $10,000,000. The Company offered the Series B preferred stock in two tranches. The first tranche closed on November 1, 2013, with the Company selling 500 shares of Series B-1 preferred stock in exchange for gross proceeds of $5,000,000. On January 20, 2014, at a special meeting of the stockholder's, the Company obtained stockholder approval for the offering. Delivery of the second tranche of $5,000,000 in exchange for 500 shares of Series B-1 preferred shares occurred on February 7, 2014. With the closing of both tranches resulting in the issuance of Series B-1 preferred shares, the Company will not offer Series B-2 preferred shares.

Holders of Series B preferred stock are entitled to cumulative dividends at a rate of 5.75% per annum when, and if, declared by the Board of Directors in its sole discretion. The dividends may be paid in cash or in the form of common stock (valued at 8% below market price, but not to exceed the lowest closing price during the applicable measurement period), at the discretion of the Board of Directors. The dividend rate on the Series B preferred stock is indexed to the Company's stock price and subject to adjustment. In addition, the Series B preferred stock contains an embedded dividend provision whereby, conversion or redemption of the preferred stock within 5 years of issuance will require dividends for the full five year period to be paid by the Company in cash or common stock (valued at 8% below market price, but not to exceed the lowest closing price during the applicable measurement period).

The Series B preferred stock may be converted into shares of common stock at the option of the Company if the closing price of the common stock exceeds $20.00, as adjusted, for 20 consecutive trading days, or by the holder at any time. The Company has the right to redeem the Series B preferred stock at a price of $10,000 per share, plus any accrued and unpaid dividends, plus the embedded dividend liability amount (if applicable). The holder of the Series B-1 preferred stock may convert to common shares at any time, at no cost, at a conversion price of $11.50 and a ratio of 1 preferred share into 870 common shares. Conversions by the holder are subject to standard ratable anti-dilution adjustments. Upon any conversion (whether at the option of the Company or the holder), the holder is entitled to receive any accrued but unpaid dividends and also any embedded dividend amount (if applicable). See Note 12. Make-whole dividend liability.

During the twelve months ended December 31, 2014, the holder of the Series B preferred stock converted the 850 preferred shares into 739,130 shares of common stock. As a result of these conversions, the Company paid a make-whole dividends in the amount of 1,238,681 shares of common stock in lieu of a cash payment of $6,483,000. As of December 31, 2014 there were 0 shares of Series B preferred stock outstanding.

Except as otherwise required by law (or with respect to approval of certain actions), the Series B preferred stock shall have no voting rights. Upon any liquidation, dissolution or winding up of the Company, holders of Series B preferred stock will be entitled to be paid out of the Company's assets, on a parity with holders of the Company's common stock and the Company's Series A preferred stock, an amount equal to $10,000 per share plus any accrued but unpaid dividends thereon.

Series C preferred stock: On April 1, 2014, the Company entered into a securities purchase agreement to issue 600 shares of Series C Preferred Stock to an investor in exchange for $6.0 million.

The Series C Preferred Stock is convertible into common stock at a fixed conversion price of $11.50 per share of common stock. Holders of Series C Preferred Stock are entitled to cumulative dividends at a rate of 5.75% per annum when and if declared by the Board of Directors in its sole discretion. The dividends may be paid in cash or in the form of common stock (valued at 8% below market price, but not to exceed 92% of the lowest closing price during the applicable measurement period), at the discretion of the Board of Directors. The dividend rate on the Series C Preferred Stock is indexed to the Company's stock price and subject to adjustment. In addition, the Series C Preferred Stock contains an embedded dividend provision whereby, conversion or redemption of the preferred stock within 5 years of issuance will require dividends for the full five year period to be paid by the Company in cash or common stock (valued at 8% below market price, but not to exceed 92% of the lowest closing price during the applicable measurement period).

The Series C Preferred Stock may be converted into shares of common stock at the option of the Company if the closing price of the common stock exceeds $22.30, as adjusted, for 20 consecutive trading days, or by the holder at any time. The Company has the right to redeem the Series C Preferred Stock at a price of $10,000 per share, plus any accrued and unpaid dividends, plus the embedded dividend amount (if applicable). The holder of the Series C Preferred Stock may convert to common shares at any time, at no cost, at a conversion price of $11.50 and a ratio of 1 preferred share into 870 common shares. Conversions by the holder are subject to standard ratable anti-dilution adjustments. Upon any conversion (whether at the option of the Company or the holder), the holder is entitled to receive any accrued but unpaid dividends and also any embedded dividend amount (if applicable).

Except as otherwise required by law (or with respect to approval of certain actions), the Series C Preferred Stock shall have no voting rights. Upon any liquidation, dissolution or winding up of the Company, holders of Series C Preferred Stock will be entitled to be paid out of the Company's assets, on a parity with holders of the Company's common stock and the Company's Series A preferred stock, an amount equal to $10,000 per share plus any accrued but unpaid dividends thereon.

In connection with the securities purchase agreement, the Company entered into a Registration Rights Agreement ("RRA"). The RRA provided that if a resale registration statement was not declared effective on or before (i) the 30th day after April 1, 2014, the Company would be required to issue 30 additional shares of Series C Preferred Stock to the investor; (ii) the 60th day after April 1, 2014, the Company would be required to issue 30 additional shares of Series C Preferred Stock to the investor; and (iii) before the 90th day after April 1, 2014, the Company would be required to issue 30 additional shares of Series C Preferred Stock to the investor. Because the resale registration statement was not declared effective until May 27, 2014, the Company issued 30 additional shares of Series C Preferred Stock to the investor on May 1, 2014.

During the year ended December 31, 2014, the holder of the Series C preferred stock converted 630 preferred shares into 547,827 shares of common stock. As a result of these conversions, the Company paid make-whole dividends in the amount of 2,935,082 shares of common stock in lieu of a cash payment of $6,841,000. As of December 31, 2014 there were 0 shares of Series C preferred stock outstanding.

Series D and D-1 preferred stock: Refer to Note 9 for descriptions of the Convertible Notes, Series D Preferred Stock, Series D-1 Preferred Stock, and Right Shares.

Series E preferred stock: Refer to Note 11 for descriptions of the Series E Preferred Stock and the Committed Equity Line.

NOTE 14. EQUITY PLANS AND SHARE-BASED COMPENSATION

Stock Option Plan: The Company's 2005 Stock Option Plan, as amended (the "Stock Option Plan") provides for the grant of incentive or non-statutory stock options to the Company's employees, directors and consultants. Upon recommendation of the Board of Directors, the stockholders approved an increase in the total shares of common stock reserved for issuance under the Stock Option Plan from 3,400,000 to 5,400,000 in 2015.

Restricted Stock Plan: The Company's 2008 Restricted Stock Plan, as amended (the "Restricted Stock Plan") was adopted by the Board of Directors and was approved by the stockholders on July 1, 2008. The Restricted Stock Plan initially reserved up to 75,000 shares (as adjusted for the Reverse Stock Split) of the Company's common stock for restricted stock awards and restricted stock units to eligible employees, directors and consultants of the Company. Upon recommendation of the Board of Directors, the stockholders approved an increase in the total shares of common stock reserved for issuance under the Restricted Stock Plan to 2,500,000 shares in 2015.

The Stock Option Plan and the Restricted Stock Plan are administered by the Compensation Committee of the Board of Directors, which determines the terms of the option and share awards, including the exercise price, expiration date, vesting schedule and number of shares. The term of any incentive stock option granted under the Stock Option Plan may not exceed ten years, or 5 years for options granted to an optionee owning more than 10% of the Company's voting stock. The exercise price of an incentive stock option granted under the Option Plan must be equal to or greater than the fair market value of the shares of the Company's common stock on the date the option is granted. An incentive stock option granted to an optionee owning more than 10% of the Company's voting stock must have an exercise price equal to or greater than 110% of the fair market value of the Company's common stock on the date the option is granted. The exercise price of a non-statutory option granted under the Option Plan must be equal to or greater than 85% of the fair market value of the shares of the Company's common stock on the date the option is granted.

Share-Based Compensation: The Company measures share-based compensation cost at the grant date based on the fair value of the award and recognizes this cost as an expense over the grant recipients' requisite service periods for all awards made to employees, officers, directors and consultants.

The share-based compensation expense recognized in the Consolidated Statements of Operations was as follows:

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	For the years ended December 31,	
	2015	2014
Share-based compensation cost included in:		
Research, development and manufacturing operations	$253,298	$358,626
Selling, general and administrative	603,513	475,691
Total share-based compensation cost	$856,811	$834,317

The following table presents share-based compensation expense by type:

	For the years ended December 31,	
	2015	2014
Type of Award:		
Stock Options	$550,784	$413,697
Restricted Stock Units and Awards	306,027	420,620
Total share-based compensation cost	$856,811	$834,317

Stock Options: The Company recognized share-based compensation expense for stock options of $551,000 to officers, directors and employees for the year ended December 31, 2015 related to stock option awards, reduced for estimated forfeitures. The weighted average estimated fair value of employee stock options granted for the years ended December 31, 2015 and 2014 was $0.72 and $4.25 per share, respectively. Fair value was calculated using the Black-Scholes Option Pricing Model with the following assumptions:

	For the years ended December 31,	
	2015	2014
Expected volatility	92.6 %	94.6 %
Risk free interest rate	1.7 %	1.9 %
Expected dividends	—	—
Expected life (in years)	5.9	6.0

Expected volatility is based on the historical volatility of the Company's stock. The risk-free rate of return is based on the yield of U.S. Treasury bonds with a maturity equal to the expected term of the award. Historical data is used to estimate forfeitures within the Company's valuation model. The Company's expected life of stock option awards is derived from historical experience and represents the period of time that awards are expected to be outstanding.

As of December 31, 2015, total compensation cost related to non-vested stock options not yet recognized was $412,000 which is expected to be recognized over a weighted average period of approximately 1.8 years. As of December 31, 2015, 1,124,785 shares were vested or expected to vest in the future at a weighted average exercise price of $3.37. As of December 31, 2015, 3,850,831 shares remained available for future grants under the Option Plan.

The following table summarizes stock option activity for grants made within the Stock Option Plan:

	Stock Option Shares	Stock Options Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years	Aggregate Intrinsic Value
Outstanding at December 31, 2013	154,800	$17.83	7.81	$51,160
Granted	105,300	$5.55		
Exercised	—	$—		$—
Forfeited	(15,900)	$13.37		
Outstanding at December 31, 2014	244,200	$12.82	7.84	$96
Granted	1,497,000	$0.96		
Exercised	—	$—		$—
Forfeited	(263,939)	1.55		

Outstanding at December 31, 2015	1,477,261	$2.81	8.84	$—
Exercisable at December 31, 2015	166,786	$16.15	6.22	$—

Restricted Stock: The Company recognized share-based compensation expense related to restricted stock grants of $306,000 for the year ended December 31, 2015. The weighted average estimated fair value of restricted stock grants for the years ended December 31, 2015 and 2014 was $0.57 and $7.06, respectively.

Total unrecognized share-based compensation expense from unvested restricted stock as of December 31, 2015 was $67,000 which is expected to be recognized over a weighted average period of approximately 0.7 years. As of December 31, 2015, 354,982 shares were expected to vest in the future. As of December 31, 2015, 1,590,893 shares remained available for future grants under the Restricted Stock Plan.
The following table summarizes non-vested restricted stock and the related activity as of and for the years ended December 31, 2015 and 2014:

	Shares		Weighted Average Grant-Date Fair-Value
Non-vested at December 31, 2013	750		$36.77
Granted	61,955		$7.06
Vested	(49,815	)	
Forfeited	(1,845	)	
Non-vested at December 31, 2014	11,045		$7.00
Granted	671,270		0.57
Vested	(272,593	)	
Forfeited	—		
Non-vested at December 31, 2015	409,722		$0.25

NOTE 15. INCOME TAXES
The Company records income taxes using the liability method. Under this method, deferred tax assets and liabilities are computed for the expected future impact of temporary differences between the financial statement and income tax bases of assets and liabilities using current income tax rates and for the expected future tax benefit to be derived from tax loss and tax credit carryforwards. ASC 740 provides detailed guidance for the financial statement recognition, measurement and disclosure of uncertain tax positions recognized in the financial statements. Tax positions must meet a “more-likely-than-not” recognition threshold before a benefit is recognized in the financial statements.
At December 31, 2015, the Company had $260,303,000 of cumulative net operating loss carryforwards for federal income tax purposes that were available to offset future taxable income through the year 2035. Under the Internal Revenue Code, the future utilization of net operating losses may be limited in certain circumstances where there is a significant ownership change. The Company prepared an analysis for the year ended December 31, 2012 and determined that a significant change in ownership has occurred as a result of the cumulative effect of the sales of common stock through its offerings. Such change limited the Company's utilizable net operating loss carryforwards to $173,262,000 for the year ended December 31, 2015. Available net operating loss carryforwards may be further limited in the event of another significant ownership change.
Deferred income taxes reflect an estimate of the cumulative temporary differences recognized for financial reporting purposes from that recognized for income tax reporting purposes. At December 31, 2015 and 2014, the components of these temporary differences and the deferred tax asset were as follows:

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	As of December 31	
	2015	2014
Deferred Tax Asset		
Current:		
Accrued Expenses	$412,000	$615,000
Inventory Allowance	253,000	339,000
Other	26,000	16,000
Total Current	691,000	970,000
Non-current:		
Stock Based Compensation-Stock Options and Restricted Stock	1,730,000	1,565,000
Tax effect of NOL carryforward	65,935,000	43,252,000
Depreciation	20,859,000	23,771,000
Amortization	(607,000)	(513,000)
Warranty reserve	102,000	53,000
Convertible Note	—	3,170,000
Total Non-current	88,019,000	71,298,000
Net deferred tax asset	88,710,000	72,268,000
Less valuation allowance	(88,710,000)	(72,268,000)
Net deferred tax asset	$—	$—

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in making this assessment. Based upon the level of historical losses and projections of future taxable income over the periods in which the deferred tax assets are deductible, management believes it is not "more-likely-than-not" that the Company will realize the benefits of these deductible differences at December 31, 2015. The Company’s deferred tax valuation allowance of $88,710,000 reflected above is an increase of $16,442,000 from the valuation allowance reflected as of December 31, 2014 of $72,268,000, resulting from the increase in net loss.

As of December 31, 2015, the Company has not recorded a liability for uncertain tax positions. The Company recognizes interest and penalties related to uncertain tax positions in income tax (benefit)/expense. No interest and penalties related to uncertain tax positions were accrued at December 31, 2015.

The Company’s effective tax rate for the years ended December 31, 2015 and 2014 differs from the statutory rate due to the following (expressed as a percentage of pre-tax income):

	2015	2014
Federal statutory rate	35.0 %	35.0 %
State statutory rate	3.5 %	4.2 %
Change in rate	(0.9)%	2.1 %
Permanent tax differences	(0.3)%	(2.6)%
Change in fair value of derivatives	(44.3)%	(2.8)%
Deemed interest expense on warrant liability	(0.9)%	5.0 %
Loss on extinguishment of liabilities	43.7 %	— %
Other	(0.3)%	(0.1)%
Increase in valuation allowance	(35.6)%	(40.8)%
	— %	— %

NOTE 16. RELATED PARTY TRANSACTIONS

TFG Radiant owns approximately 4% of the Company's outstanding common stock as of December 31, 2015. In February 2012, the Company announced the appointment of Victor Lee as President and Chief Executive Officer. Mr. Lee had served on the Company's Board of Directors since November 2011 and is currently the managing director of Tertius Financial Group Pte Ltd, the joint venture partner with Radiant Group in TFG Radiant. In April 2012, the Company appointed the Chairman of TFG Radiant, Mr. Winston Xu (aka Xu Biao), as a member of its Board of Directors.

In June 2012, the Company entered into a supply agreement and a contract manufacturing agreement with TFG Radiant. Under the terms of the contract manufacturing agreement TFG Radiant will oversee certain aspects of the contract manufacturing process related to the Company's EnerPlex™ line of consumer products. The Company compensated TFG Radiant for acting as general contractor in the contract manufacturing process. Under the supply agreement TFG Radiant intends to distribute the Company's consumer products in Asia. In December 2012, the Company entered into a consulting agreement with TGF Radiant for product design, product development and manufacturing coordination activities provided by TFG Radiant to the Company in connection with the Company's line of consumer electronics products. This consulting services agreement was terminated effective March 31, 2014. During the year ended December 31, 2015, the Company made no disbursements to TFG Radiant. During the year ended December 31, 2014, the Company made disbursements to TFG Radiant in the amount of $518,000. Included within these disbursements is $200,000 for consulting fees and $318,000 for finished goods received and deposits for work-in-process. During the years ended December 31, 2015 and 2014, the Company recognized revenue in the amount of $0 and $8,000, respectively, for products sold to TFG Radiant under the supply agreement. As of December 31, 2015 and 2014, the Company had $0 in receivables and deposits with TFG Radiant.

NOTE 17. COMMITMENTS AND CONTINGENCIES

On October 21, 2011, the Company was notified that a complaint claiming $3.0 million for an investment banking fee (the “Lawsuit”) was filed by Jefferies & Company, Inc. (“Jefferies”) against the Company in New York State Supreme Court in the County of New York. In December 2010, the Company and Jefferies entered into an engagement agreement (the “Fee Agreement”) pursuant to which Jefferies was hired to act as the Company's financial advisor in relation to certain potential transactions. In addition, Jefferies claimed an award for attorney's fees and prejudgment interest in the approximate amount of $1.2 million.

On April 16, 2014, the parties settled the lawsuit where the Company agreed to pay Jefferies a total of $2.0 million in equal installments over 40 months. The Company has paid $1,050,000 through December 31, 2015.

The Company records a liability in its financial statements for costs related to claims, including settlements and judgments, where the Company has assessed that a loss is probable and an amount can be reasonably estimated. The Company accrued $1.7 million, the net present value of the $2.0 million settlement, as of December 31, 2013. As of December 31, 2015, $340,000 was accrued for the long-term portion of this settlement and $541,000 was recorded as Accrued litigation settlement, current portion, in the Balance Sheets.

On June 30, 2014, the Company entered into a Service Agreement with Swyft, Inc.Swyft will sell consumer products through automated retail stores (kiosks), provide online and mobile retail channels through a website and mobile application, and provide visual and text based advertising through both physical and digital channels. Under the terms of the original agreement, the Company will provide financing to Swyft in the form of a three year 8% convertible note to purchase seventy five (75) automated retail stores at $4,500 per store, or a total of $337,500, from ZoomSystems, the manufacturer of automated retail machines. On June 3, 2015, the Company and Swyft entered into an amendment to the agreement which modified the total number of automated retail stores to 38 stores, and modified the convertible note to $171,000. The convertible loan financing for the thirty eight (38) automated retail stores of $171,000 was provided by the Company during the third quarter of 2014. The Service Agreement also required that the Company pay a one-time project set-up fee of $125,000 which was paid during the third quarter of 2014.

Effective July 26, 2015, the Company terminated the Services Agreement with Swyft, Inc. pursuant to the terms outlined in the Services Agreement dated June 30, 2014. Negotiations between Swyft and the Company are ongoing regarding a settlement amount to be paid to the Company. As of December 31, 2015 the Company has determined that $99,000 of the convertible note is unrecoverable and has been expensed. Swyft has paid the Company $10,000 to date, which results in an outstanding convertible note balance of $62,000 as of December 31, 2015.

NOTE 18. RETIREMENT PLAN

On July 1, 2006, the Company adopted a qualified 401(k) plan which provides retirement benefits for all of its eligible employees. Under the plan, employees become eligible to participate at the first entry date, provided they are at least 21 years of age. The participants may elect through salary reduction to contribute up to ceilings established in the Internal Revenue Code. The Company will match 100% of the first six percent of employee contributions. In addition, the Company may make discretionary contributions to the Plan as determined by the Board of Directors. Employees are immediately vested in all salary reduction contributions. Rights to benefits provided by the Company’s discretionary and matching contributions vest 100% after the first year of service for all employees hired before January 1, 2010. For employees hired after December 31, 2009, matching contributions vest over a three-year period, one-third per year. Payments for 401(k) matching totaled $333,636 and $262,467 for the years ended December 31, 2015 and 2014, respectively. Payments for 401(k) matching are recorded under “Research, development and manufacturing operations" expense and “Selling, general and administrative" expense in the Statements of Operations.

NOTE 19. JOINT VENTURE

On December 28, 2013, the Company entered into a definitive agreement for the establishment of a joint venture with the Government of the Municipal City of Suqian in Jiangsu Province, China (“Suqian”). The purpose of the joint venture was to build a factory located in Suqian to manufacture our proprietary photovoltaic modules. The Suqian joint venture project had progressed more slowly than originally anticipated due to a number of factors including short supply of needed technical skills in the Suqian area and other factors affecting the long term viability of the partnership. Accordingly, on August 5, 2015, Suqian and the Company mutually agreed to terminate the joint venture project.

The parties liquidated the joint venture and distributed any available proceeds to the parties pro rata in accordance with the parties' contributions to the joint venture to date. The Company received approximately $191,000 in cash upon liquidation of the joint venture during the year ended December 31, 2015. The Company's contributions to the joint venture have consisted of (i) $320,000 in cash and (ii) certain technical and engineering consulting services. The Company does not anticipate having any material current or ongoing liabilities relating to the joint venture or its termination.

NOTE 20. SUBSEQUENT EVENT

Series F Preferred Stock

On January 19, 2016, the Company entered into a securities purchase agreement (the “Series F SPA”) with the Private Investor for the sale of $7,000,000 of the Company’s newly designated Series F 7% Convertible Preferred Stock (the “Series F Preferred Stock”).

On January 20, 2016, the Company sold and issued 700 shares of Series F Preferred Stock to the Private Investor. The aggregate purchase price of the Series F Preferred was $7,000,000. On January 20, 2016 the Private Investor paid $500,000 to the Company. The remaining $6,500,000 will be paid by the Private Investor to the Company in 14 weekly increments of $500,000 or $250,000 beginning January 25, 2016 and ending April 25, 2016. The Private Investor is not required to continue to make such weekly payments to the Company if (i) certain specified equity conditions are not met, (ii) the Company is in default of its obligations under the Series F SPA or the Series F Certificate of Designation, or (iii) the issuance of common stock upon conversion or redemption of the shares of the Series F Preferred Stock being funded would exceed the 19.99% issuance limit and the Company has not yet received stockholder approval for issuances above such limit.

Holders of the Series F Preferred Stock are entitled to dividends in the amount of 7% per annum, payable when, as and if declared by the Board of Directors in its discretion.

Shares of the Series F Preferred Stock (including the amount of any accrued and unpaid dividends thereon) are convertible at the option of the holder into common stock at a fixed conversion price equal to $0.25 per share. If certain defined default events occur, then the conversion price would thereafter be reduced (and only reduced), to equal 70% of the average of the two lowest two lowest VWAPs of our common stock for the twenty consecutive trading day period prior to the conversion date.

The Company will make weekly redemptions of shares of Series F Preferred Stock (including any accrued and unpaid dividends thereon) beginning February 15, 2016. If the redemption price is paid by the Company in cash, the number of shares to be redeemed in each weekly increment shall be 250 shares of Series F Preferred Stock, and the redemption price shall be at a price per share equal to $1,250 plus any accrued but unpaid dividends thereon.

The Company shall have the option to make such redemption payments in shares of common stock provided certain specified equity conditions are satisfied at the time of payment. The number of shares of common stock to be issued would be calculated using a per share price equal to 80% of the one lowest VWAP of our common stock for the ten consecutive trading

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day period prior to the payment date. For redemption payments made in shares of common stock, the Company will redeem either (i) 250 shares of Series F Preferred Stock or (ii) such greater number of shares of Series F Preferred Stock (and also including any accrued and unpaid dividends) that would result upon redemption in the issuance of a number of shares of common stock equal to 12% of the aggregate composite trading volume for the Company’s common stock during the preceding calendar week. The Private Investor has the option to take delivery of common stock being issued as a redemption payment on a single payment date or to take delivery of such shares in two tranches on two different days within one week. The Private Investor exercised their option to convert 1,341 Series F Preferred Shares, representing a value of $1.34 million, resulting in the issuance of 24,746,803 shares of common stock as of the date the consolidated financial statements were available to be issued.

Transition to OTCQB

The Company has been notified by The NASDAQ Stock Market LLC ("NASDAQ") that its pending appeal before the NASDAQ Listing Qualifications Hearing Panel had been denied, and that trading in the Company's common stock was suspended on NASDAQ effective with the open of business on Thursday February 25, 2016.

The Company received a notice from NASDAQ in June 2015 notifying the Company that it had failed to comply with NASDAQ Listing Rule 5550(b)(2), which requires the Company to maintain a minimum “Market Value of Listed Securities” of $35 million for continued listing on the NASDAQ Capital Market. Such notice also noted that the Company did not meet the alternative requirements under Listing Rules 5550(b)(1) (requiring $2.5 million of stockholders equity) or 5550(b)(3) (requiring annual net income from continuing operations of $500,000). Additionally, the Company received a separate notice from NASDAQ in June 2015 notifying the Company that it had failed to comply with NASDAQ Listing Rule 5550(a)(2), which requires the Company to maintain a minimum closing bid price for the Company’s common stock of $1.00 per share for continued listing on the NASDAQ Capital Market.

Pursuant to the NASDAQ Marketplace Rules, the Company was provided an initial compliance period of 180 calendar days, or until mid-December 2015, to regain compliance with the foregoing requirements. The Company did not regain compliance with these requirements by mid-December 2015, and the Company requested a hearing before the NASDAQ Listing Qualifications Hearings Panel. The hearing was held on February 11, 2016.

At the hearing, the Company presented a plan to regain compliance with all listing rules and requested that the Panel allow the Company additional time within which to regain compliance. The Company’s request was denied by the Panel on February 23, 2016.

The Company has been approved for trading on the OTCQB® Venture Market, operated by OTC Markets Group Inc., and its common stock began trading on OTCQB effective February 25, 2016 under its current trading symbol "ASTI."

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INDEX TO EXHIBITS

Set forth below is a list of exhibits that are being filed or incorporated by reference into this Annual Report on Form 10-K:

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.2 to our Registration Statement on Form SB-2 filed on January 23, 2006 (Reg. No. 333-131216))
3.2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011)
3.3	Certificate of Amendment to the Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed February 11, 2014)
3.4	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Company, dated August 26, 2014. (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed September 2, 2014)
3.5	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Company, dated October 27, 2014 (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K dated October 28, 2014)
3.6	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Company, dated December 22, 2014. (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K dated December 23, 2014)
3.7	Second Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to our Current Report on Form 8-K filed on February 17, 2009)
3.8	First Amendment to Second Amended and Restated Bylaws (incorporated by reference to Exhibit 3.3 to our Quarterly Report on Form 10-Q for the quarter ended September 30, 2009)
3.9	Second Amendment to Second Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed January 25, 2013)
3.10	Third Amendment to Second Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed December 18, 2015)
3.11	Certificate of Designations of Preferences, Rights and Limitations of Series F 7% Preferred Stock (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed January 20, 2016)
4.1	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 to our Registration Statement on Form SB-2 filed on January 23, 2006 (Reg. No. 333-131216))
4.2	Certificate of Designations of Series A Preferred Stock (filed as Exhibit 4.2 to our Registration Statement on Form S-3 filed July 1, 2013 (Reg. No. 333-189739))

4.3	Form of Warrant (filed as Exhibit 4.3 to our Registration Statement on Form S-3 filed July 1, 2013 (Reg. No. 333-189739))
4.4	Certificate of Designations of Series B-1 and B-2 Preferred Stock (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed October 30, 2013)
4.5	Certificate of Designations of Series C Preferred Stock (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed April 2, 2014)
4.6	Certificate of Designations of Preferences, Rights and Limitations of Series D Preferred Stock (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed November 17, 2014)
4.7	Form of Warrant (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed February 20, 2015)
4.8	Certificate of Designations of Preferences, Rights and Limitations of Series D-1 Preferred Stock (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed February 20, 2015)

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Exhibit No.	Description
4.9	Form of Warrant (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed February 20, 2015)
4.10	Certificate of Designations, Preferences and Rights of the Series E Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed on November 10, 2015)
10.1†	Fifth Amended and Restated 2005 Stock Option Plan (incorporated by reference to Annex A of our definitive proxy statement dated October 22, 2014).†
10.2†	Fifth Amended and Restated 2008 Restricted Stock Plan Stock Option Plan Plan (incorporated by reference to Annex B of our definitive proxy statement dated October 22, 2014).†
10.3	Securities Purchase Agreement, dated January 17, 2006, between the Company and ITN Energy Systems, Inc. (incorporated by reference to Exhibit 10.1 to our Registration Statement on Form SB-2 filed on January 23, 2006 (Reg. No. 333-131216))[CTR]
10.4	Invention and Trade Secret Assignment Agreement, dated January 17, 2006, between the Company and ITN Energy Systems, Inc. (incorporated by reference to Exhibit 10.2 to our Registration Statement on Form SB-2 filed on January 23, 2006 (Reg. No. 333-131216))[CTR]
10.5	Patent Application Assignment Agreement, dated January 17, 2006, between the Company and ITN Energy Systems, Inc. (incorporated by reference to Exhibit 10.3 to our Registration Statement on Form SB-2 filed on January 23, 2006 (Reg. No. 333-131216))
10.6	License Agreement, dated January 17, 2006, between the Company and ITN Energy Systems, Inc. (incorporated by reference to Exhibit 10.4 to our Registration Statement on Form SB-2 filed on January 23, 2006 (Reg. No. 333-131216))[CTR]
10.7	Service Center Agreement, dated January 17, 2006, between the Company and ITN Energy Systems, Inc., as amended (incorporated by reference to Exhibit 10.6 to our Registration Statement on Form SB-2 filed on January 23, 2006 (Reg. No. 333-131216))
10.8	Administrative Services Agreement, dated January 17, 2006, between the Company and ITN Energy Systems, Inc., as amended (incorporated by reference to Exhibit 10.8 to our Registration Statement on Form SB-2 filed on January 23, 2006 (Reg. No. 333-131216))
10.9	Letter Agreement, dated November 23, 2005, among the Company, ITN Energy Systems, Inc. and the University of Delaware (incorporated by reference to Exhibit 10.16 to our Registration Statement on Form SB-2/A filed on May 26, 2006 (Reg. No. 333-131216))

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Exhibit No.	Description
10.10	License Agreement, dated November 21, 2006, between the Company and UD Technology Corporation (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on November 29, 2006)[CTR]
10.11	Novation Agreement, dated January 1, 2007, among the Company, ITN Energy Systems, Inc. and the United States Government (incorporated by reference to Exhibit 10.23 to our Annual Report on Form 10-KSB for the year ended December 31, 2006)
10.12	Construction Loan Agreement, dated February 8, 2008, between the Company and the Colorado Housing and Finance Authority (incorporated by reference to Exhibit 10.37 to our Annual Report on Form 10-K for the year ended December 31, 2007)
10.13	Promissory Note, dated February 8, 2008, issued to the Colorado Housing and Finance Authority (incorporated by reference to Exhibit 10.38 to our Annual Report on Form 10-K for the year ended December 31, 2007)
10.14	Loan Modification Agreement, dated January 29, 2009, between the Company and the Colorado Housing and Finance Authority (incorporated by reference to Exhibit 10.52 to our Annual Report on Form 10-K for the year ended December 31, 2008)
10.15	Cooperation Agreement, dated December 18, 2007, between the Company and Norsk Hydro Produksjon AS (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on December 19, 2007)
10.16	Equipment Purchase Agreement, dated January 7, 2010, between the Company and ITN Energy Systems, Inc. (incorporated by reference to Exhibit 10.46 to our Annual Report on Form 10-K for the year ended December 31, 2009)
10.17	Securities Purchase Agreement dated as of August 12, 2011 between TFG Radiant Investment Group Ltd. and the Company (incorporated by reference to Exhibit 99.1 to our Current Report on Form 8-K filed on August 15, 2011)
10.18	Stockholders Agreement dated as of August 12, 2011 between TFG Radiant Investment Group Ltd. and the Company (incorporated by reference to Exhibit 99.2 to our Current Report on Form 8-K filed on August 15, 2011)
10.19	Registration Rights Agreement dated as of August 12, 2011 between TFG Radiant Investment Group Ltd. and the Company (incorporated by reference to Exhibit 99.3 to our Current Report on Form 8-K filed on August 15, 2011)
10.20	Joint Development Agreement dated as of August 12, 2011 between TFG Radiant New-Energy Group Ltd. and the Company (incorporated by reference to Exhibit 10.5 to our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011)[CTR]
10.21	Amended and Restated Stockholders Agreement dated as of December 30, 2011 between TFG Radiant Investment Group Ltd. and the Company (incorporated by reference to Exhibit 99.2 to our Current Report on Form 8-K filed on January 5, 2012)

10.22	Amended and Restated Registration Rights Agreement dated as of December 30, 2011 between TFG Radiant Investment Group Ltd. and the Company (incorporated by reference to Exhibit 99.3 to our Current Report on Form 8-K filed on January 5, 2012)
10.23	Services Agreement dated December 10, 2012 between the Company and TFG Radiant (incorporated by reference to Exhibit 99.1 to our Current Report on Form 8-K filed December 14, 2012)

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Exhibit No.	Description
10.24	Stock Purchase Agreement, dated April 26, 2013, between the Company and Foo Joo Loong (filed as Exhibit 10.1 to our Registration Statement on Form S-3 filed July 1, 2013 (Reg. No. 333-189739))
10.25	Securities Purchase Agreement, dated June 17, 2013, between the Company and Seng Wei Seow (filed as Exhibit 10.2 to our Registration Statement on Form S-3 filed July 1, 2013 (Reg. No. 333-189739))
10.26	Registration Rights Agreement dated June 17, 2013 between the Company and Seng Wei Seow (filed as exhibit 10.2 to our Current Report on Form 8-K filed June 21, 2013)
10.27	First Amendment dated August 7, 2013 to Securities Purchase Agreement and Registration Rights Agreement (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on August 7, 2013)
10.28	Second Amendment dated August 13, 2013 to Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on August 15, 2013)
10.29	Framework Agreement, dated July 2, 2013, between the Company and the Government of the Municipal City of Suqian in Jiangsu Province, China (incorporated by reference to Exhibit 10.5 to our Registration Statement on Form S-3 filed August 29, 2013 (Reg. No. 333-190701), as amended)
10.30	Stock Purchase Agreement, dated October 28, 2013 between the Company and Ironridge Technology Co., a division of Ironridge Global IV, Ltd. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed October 30, 2013)
10.31	Industrial Project Entry and Joint Venture Construction Contract by and between the Registrant and Suqian Economic Development Company, Ltd. dated December 28, 2013*
10.32	Securities Purchase Agreement, dated April 1, 2014, between the Company and Ironridge Global IV, Ltd. (filed as Exhibit 10.1 to our Current Report on Form 8-K April 2, 2014)
10.33	Registration Rights Agreement dated April 1, 2014 between the Company and Ironridge Global IV, Ltd. (filed as exhibit 10.2 to our Current Report on Form 8-K filed April 2, 2014)
10.34†	Executive Employment Agreement, dated April 4, 2014, between the Company and Victor Lee (filed as Exhibit 10.1 to our Current Report on Form 8-K filed on April 9, 2014) †
10.35	Settlement Agreement and Release dated April 15, 2014 between the Company and Jefferies LLC (filed as Exhibit 10.1 to our Current Report on Form 8-K filed on April 22, 2014)
10.36	Stock Purchase Agreement, dated July 29, 2014, between the Company and SHTARD Enterprise Ltd. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K July 31, 2014)
10.37	Securities Purchase Agreement, dated August 29, 2014, among the Company, Seng Wei Seow and TFG Radiant Investment Group Ltd. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed September 4, 2014)

10.38	Securities Purchase Agreement, dated November 14, 2014, between the Company and the Investor named therein (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed November 17, 2014)
10.39	Form of Senior Secured Convertible Note (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed November 17, 2014)
10.40	Form of Registration Rights Agreement between the Company and the Investor named therein (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed November 17, 2014)
10.41	Form of Security and Pledge Agreement by the Company in favor of the collateral agent named therein (incorporated by reference to Exhibit 10.5 to our Current Report on Form 8-K filed November 17, 2014)
10.42	Securities Purchase Agreement, dated February 19, 2015, between the Company and the Investor named therein(incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed February 20, 2015)

Exhibit No.	Description
10.43	Securities Purchase Agreement, dated April 6, 2015, between the Company and TFG Radiant Investment Group Ltd. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed April 7, 2015)
10.44	Securities Purchase Agreement, dated June 10, 2015, between the Company and TFG Radiant Investment Group Ltd. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed June 15, 2015)
10.45	Amendment and Exchange Agreement, dated July 22, 2015 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed July 23, 2015)
10.46	Right to Receive Common Stock dated July 22, 2015 (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed July 23, 2015)
10.47	Confidential Settlement Agreement and General Release, dated as of May 13, 2015, between the Company and William M. Gregorak (incorporated by reference to Exhibit 10.5 to our Quarterly Report on Form 10-Q filed August 14, 2015)
10.48	Cancellation and Waiver Agreement dated September 4, 2015 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed September 8, 2015)
10.49	Note Purchase Agreement dated September 4, 2015 (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed September 8, 2015)
10.50	Security Agreement dated September 4, 2015 (incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K filed September 8, 2015)
10.51	Secured Convertible Promissory Note for $1,000,000 dated September 4, 2015 (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed September 8, 2015)
10.52	Secured Convertible Promissory Note for $500,000 dated September 4, 2015 (incorporated by reference to Exhibit 10.5 to our Current Report on Form 8-K filed September 8, 2015)
10.53	Joinder to Note Purchase Agreement dated September 28, 2015 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed September 28, 2015)
10.54	Secured Convertible Promissory Note for $500,000 dated September 28, 2015 (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed September 28, 2015)
10.55	Amendment No. 1 dated October 8, 2015 to Cancellation and Waiver Agreement dated September 4, 2015 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed October 9, 2015)
10.56	Series E Securities Purchase Agreement, dated November 4, 2015, between the Company and Redwood Management, LLC Ltd (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed November 10, 2015)

10.57	Series E Registration Rights Agreement, dated November 4, 2015, between the Company and Redwood Management, LLC (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed November 10, 2015)
10.58	Equity Line Purchase Agreement dated November 10, 2015 (incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K filed November 10, 2015)
10.59	Equity Line Registration Rights Agreement dated November 10, 2015 (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed November 10, 2015)
10.60	Amendment No. 2 dated November 22, 2015 to Cancellation and Waiver Agreement dated September 4, 2015 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed November 23, 2015)

Exhibit No.	Description
10.61†	Sixth Amended and Restated 2005 Stock Option Plan (incorporated by reference to Annex C of our definitive proxy statement dated May 1, 2015).†
10.62†	Sixth Amended and Restated 2008 Restricted Stock Plan Stock Option Plan Plan (incorporated by reference to Annex B of our definitive proxy statement dated May 1, 2015).†
10.63	Series F Securities Purchase Agreement, dated January 19, 2016, between the Company and Redwood Management, LLC Ltd (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed January 20, 2016)
23.1	Consent of Hein & Associates LLP*
31.1	Chief Executive Officer Certification pursuant to section 302 of the Sarbanes-Oxley Act of 2002*
31.2	Chief Financial Officer Certification pursuant to section 302 of the Sarbanes-Oxley Act of 2002*
32.1	Chief Executive Officer Certification pursuant to section 906 of the Sarbanes-Oxley Act of 2002*
32.2	Chief Financial Officer Certification pursuant to section 906 of the Sarbanes-Oxley Act of 2002*
101.INS	XBRL Instance Document*
101.SCH	XBRL Taxonomy Extension Schema Document*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document*

* Filed herewith
CTR Portions of this exhibit have been omitted pursuant to a request for confidential treatment.
† Denotes management contract or compensatory plan or arrangement.