

MAJESCO ENTERTAINMENT CO
Form 10-K
December 30, 2016

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Kd

(Mark One)

Annual Report Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934
For the fiscal year ended October 31, 2016

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the Transition Period from to

Commission File No. 000-51128

MAJESCO ENTERTAINMENT COMPANY
(Exact name of registrant as specified in its charter)

DELAWARE 06-1529524
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)

4041-T Hadley Road
South Plainfield, New Jersey 07080
(Address of principal executive office)

Registrant's telephone number, including area code (732) 225-8910
Securities registered pursuant to Section 12(b) of the Act: NONE
Securities registered pursuant to Section 12(g) of the Act:

Common Stock, Par Value \$0.001 NASDAQ Capital Market
(Title of class) (Name of exchange on which registered)

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required

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to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein and, will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

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

The aggregate market value of the common stock held by non-affiliates as of April 30, 2016 was \$9.4 million.

The outstanding number of shares of common stock as of December 19, 2016 was 3,208,284.

The Registrant's proxy or information statement is incorporated by reference into Part III of this Annual Report on Form 10-K.

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Item 1. Business.

Forward-looking Statements

Statements in this Annual Report on Form 10-K that are not historical facts constitute forward-looking statements that are made pursuant to the safe harbor provisions of Section 21E of the Securities Exchange Act of 1934, as amended, or the “Exchange Act”. Examples of forward-looking statements include statements relating to industry prospects, our future economic performance including anticipated revenues and expenditures, results of operations or financial position, and other financial items, our business plans and objectives, including our intended product releases, and may include certain assumptions that underlie forward-looking statements. Risks and uncertainties that may affect our future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements include, among other things, those listed under “Risk Factors” and elsewhere in this Annual Report. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “expects,” “intends,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other comparable terminology. These statements are subject to business and economic risk and reflect management’s current expectations, and involve subjects that are inherently uncertain and difficult to predict. Actual events or results may differ materially. Moreover, neither we nor any other person assumes responsibility for the accuracy or completeness of these statements. We are under no duty to update any of the forward-looking statements after the date of this Annual Report to conform these statements to actual results. References herein to “we,” “us,” and “the Company” are to Majesco Entertainment Company.

Introduction

Majesco Entertainment Company is an innovative developer, marketer, publisher and distributor of interactive entertainment for consumers around the world. Building on more than 25 years of operating history, Majesco develops and publishes a wide range of video games on digital networks through its Midnight City label, including Nintendo’s DS, 3DS, Wii and WiiU, Sony’s PlayStation 3 and 4, or PS3 and PS4, Microsoft’s Xbox 360 and Xbox One and the personal computer, or PC. Majesco is headquartered in South Plainfield, New Jersey, and its common stock is traded on The NASDAQ Capital Market under the symbol “COOL”.

Although, historically, we have sold packaged console software to large retail chains, specialty retail stores, video game rental outlets and distributors and through digital distribution for platforms such as Xbox Live Arcade, PlayStation Network, or PSN, and Steam, and for mobile devices and online platforms, we now operate, almost exclusively a digital software distribution and licensing business.

On July 31, 2015, we transferred to Zift Interactive LLC (“Zift”), a newly-formed subsidiary, certain rights under certain of our publishing licenses related to developing, publishing, and distributing video game products through retail distribution for a term of one year. We then transferred Zift to our former chief executive officer, Jesse Sutton.

Our titles are targeted at various demographics at a range of various price points. Due to the larger budget requirements for developing and marketing premium console titles, we have focused on publishing lower-cost games targeting casual-game consumers and independent game developer fans. In some instances, our titles are based on licenses of well-known properties and, in other cases, original properties. We enter into agreements with content providers and video game development studios for the creation of video games sold domestically and internationally.

On December 1, 2016, we entered into an Agreement and Plan of Reorganization (the “Agreement”) with Majesco Acquisition Corp., a Nevada corporation and wholly-owned subsidiary of the Company, PolarityTE, Inc., a Nevada corporation (“Polarity”) and Dr. Denver Lough, the owner of 100% of the issued and outstanding shares of capital stock of Polarity (the “Seller”). The closing is subject to various closing conditions.

Company Background

Our principal executive offices are located at 4041-T Hadley Road, South Plainfield, NJ 07080 and our telephone number is (732) 225-8910. Our web site address is www.majescoentertainment.com.

Majesco Holdings Inc. (formerly ConnectivCorp) was incorporated in 2004 under the laws of the State of Delaware. As a result of a merger, Majesco Sales Inc. became a wholly-owned subsidiary and the sole operating business of the Company, which changed its name to Majesco Entertainment Company.

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Reverse stock-split

On July 27, 2016, Majesco Entertainment Company (the “Company”) filed a certificate of amendment (the “Amendment”) to its Restated Certificate of Incorporation with the Secretary of State of the State of Delaware in order to effectuate a reverse stock split of the Company’s issued and outstanding common stock, par value \$0.001 per share on a one (1) for six (6) basis, effective on July 29, 2016 (the “Reverse Stock Split”).

The Reverse Stock Split was effective with The NASDAQ Capital Market (“NASDAQ”) at the open of business on August 1, 2016. The par value and other terms of the Company’s common stock were not affected by the Reverse Stock Split. The Company’s post-Reverse Stock Split common stock has a new CUSIP number, 560690 406. The Company’s transfer agent, Equity Stock Transfer LLC, acted as exchange agent for the Reverse Stock Split.

As a result of the Reverse Stock Split, every six shares of the Company’s pre-Reverse Stock Split common stock will be combined and reclassified into one share of the Company’s common stock. No fractional shares of common stock were issued as a result of the Reverse Stock Split.

All common share and per share amounts have been restated to show the effect of the Reverse Stock Split.

Industry Overview

The video game software market is comprised of two primary sectors: (i) dedicated console software for systems such as the Xbox, PlayStation, Wii, and handheld gaming systems, such as the Nintendo DS and Nintendo 3DS. The majority of software for these platforms has historically been purchased in packaged form through retail outlets. However, in recent years an increasing amount of software has been made available digitally through online networks such as Microsoft’s Xbox Live Arcade (“XBLA”), and Sony’s PlayStation Network (“PSN”); and (ii) software for multipurpose devices such as personal computers (“PCs”) and mobile devices such as smartphones and tablets.

Online and mobile digital games

We have released numerous games for digital distribution over various third party networks for dedicated game consoles or PC, such as Xbox Live Arcade, PlayStation Network and Steam. We have released titles for various mobile platforms, including Apple’s iOS and Android. We have published our own digital games and served as a distributor for other developer’s products in return for a percentage of net revenues generated by the game. Some of the games are distributed under the label “Midnight City” which we established to provide services to the indie game development community.

Selected digital titles, their compatible platforms and launch dates included:

Selected Titles	Platform	Launch Date
Serious Sam	XBLA	March 2010
Bloodrayne Betrayal	Steam, XBLA, PSN	September 2011
Double Dragon:Neon	Steam, XBLA, PSN	September 2012
Bloodrayne	XBLA, PSN	July 2013
Greg Hastings Paintball	XBLA, PSN	July 2013
Zumba Dance	iOS	July 2013
Slender: The Arrival	Steam	

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		October 2013
Blood of the Werewolf	Steam	October 2013
The Bridge	XBLA	November 2013
RBI Baseball	XBLA	April 2014
Slender: The Arrival	XBLA, PSN	September 2014
Costume Quest 2	Steam, XBLA, PSN	October 2014
Grapple	Steam	March 2015
Krautscape	Steam	April 2015
Avalanche 2: Super Avalanche	Steam	August 2015
Gone Home	Xbox 1, PSN	January 2016
A Boy and His Blob	Steam, XBLA, PSN, iOS,	January 2016

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Retail distribution.

Prior to July 2015, we derived the majority of revenues from the sale of games for dedicated game consoles through retail distribution. Specifically, we have generated a substantial amount of our revenues in this channel from two “hit” franchises, Cooking Mama and Zumba Fitness. These titles are late in their life cycle, and as a result, generated significantly reduced sales than early in their life cycle. We have also released a number of other titles, primarily for the casual game consumer on the Nintendo DS, Nintendo Wii and Microsoft 360 Kinect. Retail distribution no longer constitutes any focus of our business.

Product Development

We primarily use third party development studios to develop our games. However, we may employ game-production and quality-assurance personnel to manage the creation of the game and its ultimate approval by the first party hardware manufacturer. We carefully select third parties to develop video games based on their capabilities, suitability, availability and cost. We typically have broad rights to commercially utilize products created by the third party developers we work with. Development contracts are structured to provide developers with incentives to provide timely and satisfactory performance by associating payments with the achievement of substantive development milestones, and by providing for the payment of royalties to them based on sales of the developed product, only after we recoup development costs.

The process for producing video games also involves working with platform manufacturers from the initial game concept phase through approval of the final product. During this process, we work closely with the developers and manufacturers to ensure that the title undergoes careful quality assurance testing. Each platform manufacturer requires that the software and a prototype of each title, together with all related artwork and documentation, be submitted for its pre-publication approval. This approval is generally discretionary.

Intellectual Property

Our business is dependent upon intellectual property rights in numerous respects. We typically own the copyright to our software code and content and register copyrights and trademarks in the United States as appropriate.

Platform Licenses

Hardware platform manufacturers require that publishers obtain a license from them to publish titles for their platforms. We currently have non-exclusive licenses from Nintendo, Microsoft and Sony for each of the popular console and handheld platforms. Each license generally extends for a term of between two (2) to four (4) years and is terminable under a variety of circumstances. Each license allows us to create one or more products for the applicable system, and requires us to pay a per-unit license fee and/or royalty payment from the title produced and may include other compensation or payment terms. All of the hardware manufacturers approve each of the titles we submit for approval on a title-by-title basis, at their discretion. We are also dependent on approvals from distributors for our video game software for PCs and mobile devices.

Licenses from Third Parties

While we develop original titles, most of our titles are based on rights, licenses and properties, including copyrights and trademarks, owned by third parties. Even our original titles may require rights to properties from third parties, such as rights to music or content. License agreements with third parties generally extend for a term of between two (2) to four (4) years, are limited to specific territories or platforms and are terminable under a variety of circumstances. Several of our licenses are exclusive within particular territories or platforms. The licensors often have

strict approval and quality control rights. Typically, we are obligated to make minimum guaranteed royalty payments over the term of these licenses and advance payments against these guarantees, but other compensation or payment terms, such as milestone payments, are also common. From time to time, we may also license other technologies from third party developers for use in our products, which also are subject to royalties and other types of payment.

Customers

Customers of our packaged software have historically been national and regional retailers, specialty retailers and video game rental outlets. Sony, Microsoft and Valve accounted for 47%, 37%, and 13%, respectively, of sales for the fiscal year ended October 31, 2016. For the fiscal year ended 2015, our top three accounts were Microsoft (digital), GameStop and Alliance Distributors, which accounted for approximately 13%, 10% and 10% of our revenue, respectively. In fiscal 2015, we transferred our distribution activities related to packaged software and reduced our headcount and working capital requirements dramatically in order to focus on the download business, where games are downloaded from servers maintained by game companies, such as Valve, Microsoft, Sony and Nintendo. Accordingly, currently our customers are substantially users of games on those platforms. We continue to explore new distribution channels for our games.

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Competition

We compete with many other first and third party publishers and developers within the video game industry.

Seasonality

The interactive entertainment business is highly seasonal, with sales typically higher during the peak holiday selling season during the fourth quarter of the calendar year. Traditionally, the majority of sales of our packaged software for this key selling period ship in our fiscal fourth and first quarters, which end on October 31 and January 31, respectively. Significant working capital was required to finance the manufacturing of inventory of products that shipped during these quarters. By contrast, our digital distribution activities are less subject to seasonality and do not require significant investments in inventory or accounts receivable during the holiday seasons.

Employees

We had four full-time employees as of October 31, 2016.

Available Information

We file annual, quarterly, and current reports, as well as proxy statements and other information with the Securities and Exchange Commission, available to the public free of charge over the Internet at our website at <http://www.majescoent.com> In addition, any materials we file with the SEC are available on the SEC's website at www.SEC.GOV free of charge.

Item 1A. Risk Factors.

Our business and operations are subject to a number of risks and uncertainties as described below. However, the risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we may currently deem immaterial, may become important factors that could harm our business, financial condition or results of operations. If any of the following risks actually occur, our ebusiness, financial condition or results of operations could suffer.

Certain Risk Factors Relating to Polarity

Rapid technological change could cause Polarity's platform, PolarityTE, to become obsolete.

The technologies underlying Polarity's platform, PolarityTE, are subject to rapid and profound technological change. Competition intensifies as technical advances in each field are made and become more widely known. Polarity can give no assurance that others will not develop processes with significant advantages over the processes that Polarity offers or is seeking to develop. Any such occurrence could have a material and adverse effect on Polarity's business, results of operations and financial condition.

Polarity's revenues will depend upon adequate reimbursement from public and private insurers and health systems.

Polarity's success will depend on the extent to which reimbursement for the costs of its treatments will be available from third party payers, such as public and private insurers and health systems. Government and other third party payers attempt to contain healthcare costs by limiting both coverage and the level of reimbursement of new treatments. Therefore, significant uncertainty usually exists as to the reimbursement status of new healthcare treatments. If Polarity is not successful in obtaining adequate reimbursement for its treatment from these third party

payers, the market's acceptance of Polarity's treatment could be adversely affected. Inadequate reimbursement levels also likely would create downward price pressure on Polarity's treatment. Even if Polarity does succeed in obtaining widespread reimbursement for its treatment, future changes in reimbursement policies could have a negative impact on Polarity's business, financial condition and results of operations.

To be commercially successful, Polarity must convince physicians that its treatments are safe and effective alternatives to existing treatments and that Polarity's treatments should be used.

Polarity believes physicians will only adopt its treatment if they determine, based on experience, clinical data and published peer reviewed journal articles, that the use of Polarity's treatment is a favorable alternative to conventional methods, including skin grating. Physicians may be slow to change their medical treatment practices for the following reasons, among others:

- Lack of evidence supporting additional patient benefits and Polarity's treatments over conventional methods;

- Perceived liability risks generally associated with the use of new procedures; and

- Limited availability of reimbursement from third party payers.

In addition, Polarity believes that recommendations for and support of its treatments by influential physicians are essential for market acceptance and adoption. If Polarity does not receive this support or is unable to demonstrate favorable long-term clinical data, physicians and hospitals may not use Polarity's treatment, which would significantly reduce Polarity's ability to achieve revenue and would prevent Polarity from sustaining profitability.

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Polarity's ability to protect its intellectual property and proprietary technology through patents and other means is uncertain and may be inadequate, which could have a material and adverse effect on Polarity.

Polarity's success depends significantly on its ability to protect its proprietary rights to the technologies used in its treatment and PolarityTE platform. Polarity relies on patent protection, as well as a combination of copyright, trade secret and trademark laws and nondisclosure, confidentiality and other contractual restrictions to protect its proprietary technology. These legal means afford only limited protection and may not adequately protect Polarity's rights or permit Polarity to gain or keep any competitive advantage. In addition, Polarity's pending patent applications include claims to material aspects of Polarity's procedures that are not currently protected by issued patents. The patent application process can be time consuming and expensive. Polarity cannot ensure that any of its pending patent applications will result in issued patents. Competitors may be able to design around Polarity's patents or develop procedures that provide outcomes that are comparable or even superior to Polarity's. Furthermore, the laws of foreign countries may not protect Polarity's intellectual property rights to the same extent as do the laws of the United States.

The failure to obtain and maintain patents and/or protect Polarity's intellectual property rights could have a material and adverse effect on Polarity's business, results of operations, and financial condition. Whether a patent is valid is a complex matter of science and law, and therefore Polarity cannot be certain that, if challenged, its patents would be upheld. If one or more of those patents are invalidated, that could reduce or eliminate any competitive advantage Polarity might otherwise have had.

In the event a competitor infringes upon Polarity's pending patent or other intellectual property rights, enforcing those rights may be costly, uncertain, difficult and time consuming. Even if successful, litigation to enforce or defend Polarity's intellectual property rights could be expensive and time consuming and could divert Polarity's management's attention. Further, bringing litigation to enforce Polarity's patents subjects Polarity to the potential for counterclaims. In the event that one or more of our patents are challenged, a court or the United States Patent and Trademark Office ("USPTO") may invalidate the patent(s) or determine that the patent(s) is not enforceable, which could harm Polarity's competitive position. If the USPTO ultimately cancels or narrows the claim in any of Polarity's patents through these proceedings, it could prevent or hinder Polarity from being able to enforce them against competitors. Such adverse decisions could negatively impact Polarity's future, expected revenue.

Polarity may become subject to claims of infringement of the intellectual property rights of others, which could prohibit Polarity from developing its treatment, require Polarity to obtain licenses from third parties or to develop non-infringing alternatives, and subject Polarity to substantial monetary damages.

Third parties could assert that Polarity's procedures infringe their patents or other intellectual property rights. Whether a product infringes a patent or other intellectual property involves complex legal and factual issues, the determination of which is often uncertain. Therefore, Polarity cannot be certain that it has not infringed the intellectual property rights of others. Because patent applications may take years to issue, there also may be applications now pending of which Polarity is unaware that may later result in issued patents that Polarity's procedure or processes infringe. There also may be existing patents or pending patent applications of which Polarity is unaware that its procedures or processes may inadvertently infringe.

Any infringement claim could cause Polarity to incur significant costs, place significant strain on Polarity's financial resources, divert management's attention from Polarity's business and harm Polarity's reputation. If the relevant patents in such claim were upheld as valid and enforceable and Polarity was found to infringe, Polarity could be prohibited from utilizing any procedure that is found to infringe unless Polarity obtains licenses to use the technology covered by the patent or other intellectual property or is able to design around the patent or other intellectual property. Polarity may be unable to obtain such a license on terms acceptable to it, if at all, and Polarity may not be able to redesign its processes to avoid infringement. A court could also order Polarity to pay compensatory damages for such

infringement, plus prejudgment interest and could, in addition, treble the compensatory damages and award attorney fees. These damages could be substantial and could harm Polarity's reputation, business, financial condition and operating results.

Polarity's business is subject to continuing regulatory compliance by the U.S. Food and Drug Administration (the "FDA") and other authorities, which is costly and Polarity's failure to comply could result in negative effects on its business.

The FDA has specific regulations governing tissue-based products, or HCT/Ps. The FDA has broad post-market and regulatory and enforcement powers. The FDA's regulation of HCT/Ps includes requirements for registration and listing of products, donor screening and testing, processing and distribution ("Current Good Tissue Practices"), labeling, record keeping and adverse-reaction reporting, and inspection and enforcement.

Even if pre-market clearance or approval is obtained, the approval or clearance may place substantial restrictions on the indications for which the product may be marketed or to whom it may be marketed, may require warnings to accompany the product or impose additional restrictions on the sale and/or use of the product. In addition, regulatory approval is subject to continuing compliance with regulatory standards, including the FDA's quality system regulations.

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If Polarity fails to comply with the FDA regulations regarding its tissue regeneration processes, the FDA could take enforcement action, including, without limitation, any of the following sanctions:

- Untitled letters, warning letters, fines, injunctions, and civil penalties;
- Operating restrictions, partial suspension or total shutdown of procedure;
- Refusing requests for clearance or approval of new procedures;
- Withdrawing or suspending current applications for approval or approvals already granted; and
- Criminal prosecution.

It is likely that the FDA's regulation of HCT/Ps will continue to evolve in the future. Complying with any such new regulatory requirements may entail significant time delays and expense, which could have a material adverse effect on Polarity's business.

Polarity faces significant uncertainty in the industry due to government healthcare reform.

There have been and continue to be proposals by the Federal Government, State Governments, regulators and third party payers to control healthcare costs, and generally, to reform the healthcare system in the United States. There are many programs and requirements for which the details have not yet been fully established or the consequences are not fully understood. These proposals may affect aspects of Polarity's business. Polarity also cannot predict what further reform proposals, if any, will be adopted, when they will be adopted, or what impact they may have on Polarity.

Oversight in the industry might affect the manner in which Polarity may compete in the marketplace.

There are laws and regulations that govern the means by which companies in the healthcare industry may market their treatments to healthcare professionals and may compete by discounting the prices of their treatments, including for example, the federal Anti-Kickback Statute, the federal False Claims Act, the federal Health Insurance Portability and Accountability Act of 1996, state law equivalents to these federal laws that are meant to protect against fraud and abuse and analogous laws in foreign countries. Violations of these laws are punishable by criminal and civil sanctions, including, but not limited to, in some instances civil and criminal penalties, damages, fines, exclusion from participation in federal and state healthcare programs, including Medicare and Medicaid. In addition, federal and state laws are also sometimes open to interpretation, and from time to time Polarity may find itself at a competitive disadvantage if Polarity's interpretation differs from that of our competitors.

Polarity may have significant liability exposure and its insurance may not cover all potential claims.

Polarity is exposed to liability and other claims in the event that its treatment is alleged to have caused harm. Polarity may not be able to obtain insurance for the potential liability on acceptable terms with adequate coverage or at reasonable costs. Any potential product liability claims could exceed the amount of Polarity's insurance coverage or may be excluded from coverage under the terms of the policy. Polarity's insurance may not be renewed at a cost and level of coverage comparable to that then in effect.

If the NASDAQ Stock Market determines that the Merger with Polarity and the issuance of the Merger Consideration results in a change of control of the Company, the Company may be required to submit a new application under NASDAQ's original listing standards and if such application is not approved, the Company's common stock may be delisted from The NASDAQ Capital Market.

In connection with the Merger, the Company will issue 7,050 shares of Series E Preferred Stock, which are convertible into an aggregate of 7,050,000 shares of the Company's common stock. NASDAQ Rule 5110(a) provides that a Company must apply for initial listing in connection with a transaction whereby a company combines with a

non-NASDAQ entity, resulting in a change of control of such company and potentially allowing the non-NASDAQ entity to effectively obtain NASDAQ listing. In determining whether a change of control has occurred, NASDAQ considers all relevant factors including, changes in management, board of directors, voting power, ownership and financial structure of the Company. If The NASDAQ Stock Market determines that a change of control does in fact result from the consummation of the Merger and the issuance of the Merger Consideration and an original listing application has not been approved prior to the consummation of Merger, the Company will be in violation of NASDAQ Rule 5110(a) and the Company's common stock could be delisted from The NASDAQ Capital Market.

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Certain Other Risk Factors

Our financial resources are limited and we will need to raise additional capital in the future to continue our business.

We do not expect to generate the level of revenues going forward that we have achieved in prior years from our video game business. This significantly reduced revenue will impact our needs for future capital. We cannot ensure that additional funding will be available or, if it is available, that it can be obtained on terms and conditions we will deem acceptable. Any additional funding derived from the sale of equity securities is likely to result in significant dilution to our existing stockholders. These matters involve risks and uncertainties that may prevent us from raising additional capital or may cause the terms upon which we raise additional capital, if additional capital is available, to be less favorable to us than would otherwise be the case. If we reach a point where we are unable to raise needed additional funds to continue as a going concern, we will be forced to cease our business activities and dissolve the Company. In such an event, we will need to satisfy various severances, contract termination, and other dissolution-related obligations.

We have experienced recent net losses and we may incur future net losses, which may cause a decrease in our stock price.

We incurred net losses of \$4.6 million in fiscal 2016 and \$3.8 million in fiscal 2015. We may not be able to generate revenues sufficient to offset our costs and may sustain net losses in future periods. Any such losses may have an adverse effect on our future operating prospects, liquidity and stock price.

We have experienced volatility in the price of our stock and are subject to volatility in the future.

The price of our common stock has experienced significant volatility. The high and low bid quotations for our common stock, as reported by the NASDAQ Capital Market, ranged between a high of \$14.22 and a low of \$3.03 during the past 24 months. The historic market price of our common stock may be higher or lower than the price paid for our shares and may not be indicative of future market prices, depending on many factors, some of which are beyond our control. In addition, as we have significantly reduced our video game operations, and are seeking strategic alternatives, we cannot predict the performance of our stock. The price of our stock may change dramatically in response to our success or failure to consummate a strategic transaction.

Substantial future sales of our common stock by us or by our existing stockholders could cause our stock price to fall.

Additional equity financings or other share issuances by us, including shares issued in connection with strategic alliances and corporate partnering transactions, could adversely affect the market price of our common stock. Sales by existing stockholders of a large number of shares of our common stock in the public market or the perception that additional sales could occur could cause the market price of our common stock to drop.

We may not be able to maintain our listing on the NASDAQ Capital Market.

Our common stock currently trades on the NASDAQ Capital Market. This market has continued listing requirements that we must continue to maintain to avoid delisting. The standards include, among others, a minimum bid price requirement of \$1.00 per share and any of: (i) a minimum stockholders' equity of \$2.5 million; (ii) a market value of listed securities of \$35 million; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in the two of the last three fiscal years. Our results of operations and our fluctuating stock price directly impact our ability to satisfy these listing standards. In the event we are unable to maintain these listing standards, we may be subject to delisting.

A delisting from NASDAQ would result in our common stock being eligible for quotation on the Over-The-Counter market which is generally considered to be a less efficient system than listing on markets such as NASDAQ or other national exchanges because of lower trading volumes, transaction delays and reduced security analyst and news media coverage. These factors could contribute to lower prices and larger spreads in the bid and ask prices for our common stock. Additionally, trading of our common stock on the OTCBB may make us less desirable to institutional investors and may, therefore, limit our future equity funding options and could negatively affect the liquidity of our stock.

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The rights of our common stockholders are limited by and subordinate to the rights of the holders of Series A Convertible Preferred Stock, Series B Convertible Preferred Stock, Series C Convertible Preferred Stock and Series D Convertible Preferred Stock; these rights may have a negative effect on the value of shares of our common stock.

The holders of our outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock have rights and preferences generally superior to those of the holders of common stock. The existence of these superior rights and preferences may have a negative effect on the value of shares of our common stock. These rights are more fully set forth in the certificates of designations governing these instruments, and include, but are not limited to:

the right to receive a liquidation preference, prior to any distribution of our assets to the holders of our common stock; and

the right to convert into shares of our common stock at the conversion price set forth in the certificates of designations governing the respective preferred stock, which may be adjusted as set forth therein.

A decrease in the popularity of our licensed brands and, correspondingly, the video games we publish based on those brands could negatively impact our revenues and financial position.

Certain games released in 2014 and 2015 were based upon popular licensed brands. A decrease in the popularity of our licensed properties would negatively impact our ability to sell games based upon such licenses and could lead to lower net sales, profitability, and/or an impairment of our licenses, which would negatively impact our profitability.

A weak global economic environment could result in increased volatility in our stock price.

Current uncertainty in global economic conditions poses a risk to the overall economy as consumers and retailers may defer or choose not to make purchases in response to tighter credit and negative financial news, which could negatively affect demand for our products. Additionally, due to the weak economic conditions and tightened credit environment, some of our retailers and customers may not have the same purchasing power, leading to lower purchases of our games for placement into distribution channels. Reduced consumer demand for our products could materially impact our operating results.

Termination or modification of our agreements with platform hardware manufacturers may adversely affect our business.

We are required to obtain a license in order to develop and distribute software for each of the manufacturers of video game hardware. We currently have licenses from: (i) Sony to develop products for PlayStation, PlayStation 2, PlayStation 3 and PlayStation 4; (ii) from Nintendo to develop products for the DS, DSi, 3DS, Wii and WiiU; and (iii) from Microsoft to develop products for the Xbox, Xbox 360 and Xbox One. These licenses must be periodically renewed, and if they are not, or if any of our licenses are terminated or adversely modified, we may not be able to distribute any of our games on that platform or we may be required to do so on less attractive terms.

Our platform licensors control the fee structures for online distribution of our games on their platforms.

Pursuant to the terms of certain publisher license agreements, platform licensors retain sole discretion to determine the fees to be charged for both base level and premium online services available via their online platforms. Each licensor's ability to set royalty rates makes it challenging for us to predict our costs, and increased costs may negatively impact our operating margins. As a result of such varying fee structures, we may be unable to distribute our games in a

cost-effective manner through such distribution channels.

Intellectual property claims may increase our costs or require us to cease selling affected products, which could adversely affect our financial condition and results of operations.

Development of original content, including publication and distribution, sometimes results in claims of intellectual property infringement. Although we make efforts to ensure our products do not violate the intellectual property rights of others, it is possible that third parties may still allege infringement. These claims and any litigation resulting from these claims may result in damage awards payable by us; could prevent us from selling the affected product; or require us to redesign the affected product to avoid infringement or obtain a license for future sales of the affected product.

Any of the foregoing could have an adverse effect on our financial condition and results of operations. Any litigation resulting from these claims could require us to incur substantial costs.

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A reduced workforce presents additional risk to the effectiveness of our internal controls.

We have significantly reduced our workforce. A smaller workforce impacts our ability to continue to undertake our historic business which could have an impact on our ability to maintain internal controls including over financial reporting, and can affect the adequacy of our controls. We cannot be certain that our internal controls over financial reporting are or will remain effective. If we cannot adequately maintain the effectiveness of our internal controls over financial reporting, we may be subject to liability and/or sanctions or investigation by regulatory authorities, such as the SEC. Any such action could adversely affect our financial results and the market price of our common stock.

Our reputation with consumers is critical to our success. Negative consumer perceptions about our brands, games, services and/or business practices may damage our business and any costs incurred in addressing consumer concerns may increase our operating expenses.

Individual consumers form our ultimate customer base, and consumer expectations regarding the quality, performance and integrity of our products and services are high. Consumers may be critical of our brands, games, services and/or business practices for a wide variety of reasons. These negative consumer reactions may not be foreseeable or within our control to manage effectively. Actions we take to address consumer concerns may be costly and, in any case, may not be successful. In addition, negative consumer sentiment about our business practices may result in inquiries or investigations from regulatory agencies and consumer groups, as well as litigation, which, regardless of their outcome, may be damaging to our reputation. Any of these may have a negative impact on our business.

If our games and services do not function as consumers expect, it may have a negative impact on our business.

If our games and services do not function as consumers expect, whether because they fail to function as advertised or otherwise, our sales may suffer. If our games and services do not function as consumers expect, it may negatively impact our business.

If we are unable to sustain traditional pricing levels for our titles, our business, financial condition, results of operations, profitability, cash flows or liquidity could suffer materially.

If we are unable to sustain traditional pricing levels for our titles, whether due to competitive pressure, because retailers elect to price these products at a lower price or otherwise, it could have a negative impact on our business. Further, we make provisions for retail inventory price protection based upon certain assumed lowest prices and if competitive pressures force us to lower our prices below those levels, it could similarly have a negative impact on our business.

Our industry is subject to rapid technological change, and if we do not adapt to, and appropriately allocate our new resources among, emerging technologies and business models, our business may be negatively impacted.

Technology changes rapidly in the interactive entertainment industry. We must continually anticipate and adapt our products to emerging technologies, delivery platforms and business models in order to stay competitive. When we choose to incorporate a new technology into a product or to develop a product for a new platform, operating system or media format, we often are required to make a substantial investment prior to the introduction of the product. If we invest in the development of interactive entertainment products incorporating a new technology or for a new platform that does not achieve significant commercial success, our revenues from those products likely will be lower than we anticipated and may not cover our development costs. Further, our competitors may adapt to an emerging technology or business model more quickly or effectively than we do, creating products that are technologically superior to ours, more appealing to consumers, or both. If, on the other hand, we elect not to pursue the development of products incorporating a new technology or for new platforms, or otherwise elect not to pursue a new business model, that

achieves significant commercial success, it may have adverse consequences. It may take significant time and resources to shift product development resources to that technology, platform or business model, as the case may be, and may be more difficult to compete against existing products incorporating that technology or for that platform or against companies using that business model. Any failure to successfully adapt to, and appropriately allocate resources among, emerging technologies could negatively impact our business.

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Competition within, and to, the interactive entertainment industry is intense, and competitors may succeed in reducing our sales.

Within the interactive entertainment industry, we compete with other publishers of interactive entertainment software developed for use on the PC, video game consoles and handheld, mobile and tablet devices or social networking sites, both within the United States and, increasingly, in international jurisdictions. Our competitors include very large corporations with significantly greater financial, marketing and product development resources than we have. A relatively small number of titles account for a significant portion of net revenues, and an even greater portion of net profit, in the interactive entertainment industry, and the availability of significant financial resources is a major competitive factor in the production of high-quality products and in the marketing of products that are ultimately well-received. Our larger competitors may be able to leverage their greater financial, technical, personnel and other resources to finance larger budgets for development and marketing and make higher offers to licensors and developers for commercially desirable properties as well as adopt more aggressive pricing policies to develop more commercially successful products for the PC or video game platforms than we do. In addition, competitors with large product lines and popular titles typically have greater leverage with retailers, distributors and other customers, who may be willing to promote titles with less consumer appeal in return for access to those competitors' more popular titles.

Increased consumer acceptance and availability of interactive entertainment developed for use by consumers on handheld, mobile and tablet devices or social networking sites or other online games, consumer acceptance and availability of technology which allows users to play games on televisions without consoles, or technological advances in online game software or the Internet could result in a decline in sales of our platform-based software.

Additionally, we compete with other forms of entertainment and leisure activities. For example, the overall growth in the use of the Internet and online services such as social networking sites by consumers may pose a competitive threat if consumers and potential consumers spend less of their available time using interactive entertainment software and more using the Internet, including those online services. Further, it is difficult to predict and prepare for rapid changes in consumer demand that could materially alter public preferences for different forms of entertainment and leisure activities. Failure to adequately identify and adapt to the competitive pressures described herein could negatively impact our business.

We may be involved in legal proceedings that may result in material adverse outcomes.

From time to time, we may be involved in claims, suits, government investigations, audits and proceedings arising from the ordinary course of our business, including actions with respect to intellectual property, competition and antitrust matters, privacy matters, tax matters, labor and employment matters, unclaimed property matters, compliance and commercial claims. Such claims, suits, government investigations, audits and proceedings are inherently uncertain and their results cannot be predicted with certainty. Regardless of the outcome, such legal proceedings can have an adverse impact on us because of legal costs, diversion of management resources and other factors. In addition, it is possible that a resolution of one or more such proceedings could result in substantial fines and penalties, criminal sanctions, consent decrees or orders preventing us from offering certain features, functionalities, products or services, requiring us to change our development process or other business practices.

Our products are subject to ratings by the Entertainment Software Rating Board in the U.S. and similar agencies in international jurisdictions. Our failure to obtain our target ratings for our products could negatively impact our business.

The Entertainment Software Rating Board (the "ESRB") is a self-regulatory body based in the United States that provides consumers of interactive entertainment software with ratings information, including information on the content in such software, such as violence, nudity or sexual content contained in software titles. The ESRB rating

categories are "Early Childhood" (i.e., content is intended for young children), "Everyone" (i.e., content is generally suitable for all ages), "Everyone 10+" (i.e., content is generally suitable for ages 10 and up), "Teen" (i.e., content is generally suitable for ages 13 and up), "Mature" (i.e., content is generally suitable for ages 17 and up) and "Adults Only" (i.e., content is suitable for adults ages 18 and up). Certain countries other than the United States have also established content rating systems as prerequisites for product sales in those countries. In some countries, a company may be required to modify its products to comply with the requirements of the rating systems, which could delay or disrupt the release of any given product, or may prevent its sale altogether in certain territories. Further, if an agency re-rates one of our games for any reason, retailers could refuse to sell it and demand that we accept the return of any unsold or returned copies or consumers could demand a refund for copies purchased. If we are unable to obtain the ratings we have targeted for our products as a result of changes in a content rating organization's ratings standards or for other reasons, it could have a negative impact on our business.

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Our business, products, and distribution are subject to increasing regulation of content in key territories. If we do not successfully respond to these regulations, our business, financial condition, results of operations, profitability, cash flows or liquidity could be materially adversely affected.

Legislation is continually being introduced, and litigation and regulatory enforcement actions are taking place, that may affect the way in which we, and other industry participants, may offer content and features, and distribute and advertise our products. For example, privacy laws and regulatory guidance in many countries impose various restrictions on online and mobile advertising, as well as the collection, storage and use of personally identifiable information. We may be required to modify certain of our product development processes or alter our marketing strategies to comply with such regulations, which could be costly or delay the release of our products. In addition, many foreign countries, such as China and Germany, have laws that permit governmental entities to restrict the content and/or advertising of interactive entertainment software or prohibit certain types of content. Further, legislation which attempts to restrict marketing or distribution of such products because of the content therein has been introduced at one time or another at the federal and state levels in the United States. There is on-going risk of enhanced regulation of interactive entertainment marketing, content or sales. These laws and regulations vary by territory and may be inconsistent with one another, imposing conflicting or uncertain restrictions. The adoption and enforcement of legislation which restricts the marketing, content or sales of our products in countries in which we do business may harm the sales of our products, as the products we are able to offer to our customers and the size of the potential market for our products may be limited. Failure to comply with any applicable legislation may also result in government-imposed fines or other penalties. Moreover, the increased public dialogue concerning interactive entertainment may have an adverse impact on our reputation and consumers' willingness to purchase our products.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

We lease office space at 4041 T Hadley Road, South Plainfield, New Jersey at a cost of approximately \$1,613 per month under a lease agreement that expires in March 2017.

Item 3. Legal Proceedings.

On February 26, 2015, a complaint for patent infringement was filed in the United States District Court for the Eastern District of Texas by Richard Baker, an individual residing in Australia, against Microsoft, Nintendo, the Company and a number of other game publisher defendants. The complaint alleges that the Company's Zumba Fitness Kinect game infringed plaintiff's patents in motion tracking technology. The plaintiff is representing himself pro se in the litigation and is seeking monetary damages in the amount of \$1.3 million. The Company, in conjunction with Microsoft, is defending itself against the claim and has certain third party indemnity rights from developers for costs incurred in the litigation. In August 2015, the defendants jointly moved to transfer the case to the Western District of Washington. On May 17, 2016, the Washington Court issued a scheduling order that provides that defendants leave to jointly file an early motion for summary judgement in June 2016. On June 17, 2016, the defendants jointly filed a motion for summary judgment that stated that none of the defendants, including the Company, infringed upon the asserted patent. On July 9, 2016, Mr. Baker opposed the motion. On July 15, 2016, the defendants jointly filed a reply. The briefing on the motion is now closed. The Court has not yet issued a decision or indicated if or when there will be oral argument on the motion.

In addition to the item above, the Company at times may be a party to claims and suits in the ordinary course of business. We record a liability when it is both probable that a liability has been incurred and the amount of the loss or

range of loss can be reasonably estimated. The Company has not recorded a liability with respect to the matter above. While the Company believes that it has valid defenses with respect to the legal matter pending and intends to vigorously defend the matter above, given the uncertainty surrounding litigation and our inability to assess the likelihood of a favorable or unfavorable outcome, it is possible that the resolution of the matter could have a material adverse effect on our consolidated financial position, cash flows or results of operations.

Item 4. Mine Safety Disclosures.

Not applicable.

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PART II

Item 5. Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities .

Our common stock is listed for trading on the Nasdaq Capital Market under the symbol "COOL." The market for our common stock has often been sporadic, volatile and limited.

The following table shows the high and low quotations for our common stock as reported by Nasdaq from November 1, 2014 through October 31, 2016. The prices reflect inter-dealer quotations, without retail markup, markdown or commissions, and may not represent actual transactions.

	High	Low
Fiscal Year 2015		
First Quarter	\$9.54	\$3.30
Second Quarter	\$14.22	\$5.64
Third Quarter	\$10.38	\$6.54
Fourth Quarter	\$11.52	\$6.48
Fiscal Year 2016		
First Quarter	\$13.68	\$3.66
Second Quarter	\$5.94	\$4.20
Third Quarter	\$6.30	\$3.66
Fourth Quarter	\$4.50	\$3.03

Holder of Common Stock. On December 19, 2016, we had 100 registered holders of record of our common stock. On December 19, 2016, the closing sales price of our common stock as reported on Nasdaq was \$3.24 per share.

Dividends and dividend policy. Prior to October 31, 2015, we had never declared or paid any dividends on our common stock.

On January 4, 2016, we declared a special cash dividend of an aggregate of Ten Million Dollars (\$10,000,000) to be paid to holders of record on January 14, 2016 of our outstanding shares of: (i) common stock (ii) Series A Convertible Preferred Stock; (iii) Series B Convertible Preferred Stock; (iv) Series C Convertible Preferred Stock and (v) Series D Convertible Preferred Stock. The holders of record of our outstanding preferred stock participated in receiving their pro rata portion of the dividend on an "as converted" basis. The dividend was paid January 15, 2016.

We do not anticipate paying future dividends at the present time. We currently intend to retain earnings, if any, for use in our business.

Securities authorized for issuance under equity compensation plans. The information called for by this item is incorporated by reference from our definitive proxy statement relating to our 2016 Annual Meeting of Stockholders,

which we intend to file within 120 days after our October 31, 2016 fiscal year end.

Recent Sales of Unregistered Securities. All prior sales of unregistered securities have been previously reported either on a current report on Form 8-K or a quarterly report on Form 10-Q.

Item 6. Selected Financial Data

As a smaller reporting company, we are not required to provide the information under this item, pursuant to Regulation S-K Item 301(c).

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis of our financial condition and results of operations together with "Selected Financial Data" and our consolidated financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K. This discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. The actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth under "Risk Factors" and elsewhere in this Annual Report on Form 10-K.

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Overview

Majesco Entertainment Company is an innovative developer, marketer, publisher and distributor of interactive entertainment for consumers around the world. Building on more than 25 years of operating history, Majesco develops and publishes a wide range of video games on digital networks through its Midnight City label, including Nintendo's DS, 3DS, Wii and WiiU, Sony's PlayStation 3 and 4, or PS3 and PS4, Microsoft's Xbox 360 and Xbox One and the personal computer, or PC. Although, historically, we have sold packaged software to large retail chains, specialty retail stores, video game rental outlets and distributors and through digital distribution for platforms such as Xbox Live Arcade, PlayStation Network, or PSN, and Steam, and for mobile devices and online platforms, we are now purposed to operate, almost exclusively, in our digital software business unit.

On December 1, 2016, we entered into an Agreement and Plan of Reorganization (the "Agreement") with Majesco Acquisition Corp., a Nevada corporation and wholly-owned subsidiary of the Company, PolarityTE, Inc., a Nevada corporation ("Polarity") and Dr. Denver Lough, the owner of 100% of the issued and outstanding shares of capital stock of Polarity (the "Seller"). The closing is subject to various closing conditions.

Video Game Products

Net Revenues. Our revenues are principally derived from sales of our video games.

Cost of Sales. Cost of sales includes amortization and impairment of capitalized software development costs and license fees. Commencing upon the related product's release, capitalized software development and intellectual property license costs are amortized to cost of sales.

Gross Profit. Gross profit is the excess of net revenues over product costs and amortization and impairment of software development and license fees. Development and license fees incurred to produce video games are generally incurred up front and amortized to cost of sales. The recovery of these costs and total gross profit is dependent upon achieving a certain sales volume, which varies by title.

Product Research and Development Expenses. Ongoing research and development activities have been substantially reduced since fiscal 2014.

Selling and Marketing Expenses. Since July 2015, these activities are now limited to online and in social media.

General and Administrative Expenses. General and administrative expenses primarily represent employee related costs, including stock compensation, for corporate executive and support staff, general office expenses, professional fees and various other overhead charges. Professional fees, including legal and accounting expenses, typically represent one of the largest components of our general and administrative expenses. These fees are partially attributable to our required activities as a publicly traded company, such as SEC filings, and corporate- and business-development initiatives.

Interest and Financing Costs. Interest and financing costs were directly attributable to our factoring and our purchase-order financing arrangements. Such costs included commitment fees and fees based upon the value of customer invoices factored.

Income Taxes. Income taxes consist of our provisions for income taxes, as affected by our net operating loss carryforwards. Future utilization of our net operating loss, or NOL, carryforwards may be subject to a substantial annual limitation due to the "change in ownership" provisions of the Internal Revenue Code. The annual limitation may result in the expiration of NOL carryforwards before utilization. Due to our history of losses, a valuation allowance

sufficient to fully offset our NOL and other deferred tax assets has been established under current accounting pronouncements, and this valuation allowance will be maintained unless sufficient positive evidence develops to support its reversal.

Critical Accounting Estimates

Our discussion and analysis of the financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP.

The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, and expenses, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ materially from these estimates under different assumptions or conditions.

We have identified the policies below as critical to our business operations and to the understanding of our financial results. The impact and any associated risks related to these policies on our business operations is discussed throughout management's discussion and analysis of financial condition and results of operations when such policies affect our reported and expected financial results.

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Revenue Recognition. Our software products are sold exclusively as downloads of digital content for which the consumer takes possession of the digital content for a fee. Revenue from product downloads is generally recognized when the download is made available (assuming all other recognition criteria are met).

When we enter into license or distribution agreements that provide for multiple copies of games in exchange for guaranteed amounts, revenue is recognized in accordance with the terms of the agreements, generally upon delivery of a master copy, assuming our performance obligations are complete and all other recognition criteria are met, or as per-copy royalties are earned on sales of games.

Capitalized Software Development Costs and License Fees. Software development costs include development fees, primarily in the form of milestone payments made to independent software developers. Software development costs are capitalized once technological feasibility of a product is established and management expects such costs to be recoverable against future revenues. For products where proven game engine technology exists, this may occur early in the development cycle. Technological feasibility is evaluated on a product-by-product basis. Amounts related to software development that are not capitalized are charged immediately to product research and development costs. Commencing upon a related product's release, capitalized software development costs are amortized to cost of sales based upon the higher of (i) the ratio of current revenue to total projected revenue or (ii) straight-line charges over the expected marketable life of the product.

Prepaid license fees represent license fees to holders for the use of their intellectual property rights in the development of our products. Minimum guaranteed royalty payments for intellectual property licenses are initially recorded as an asset (capitalized license fees) and a current liability (accrued royalties payable) at the contractual amount upon execution of the contract or when specified milestones or events occur and when no significant performance commitment remains with the licensor. Licenses are expensed to cost of sales at the higher of (i) the contractual royalty rate based on actual sales or (ii) an effective rate based upon total projected revenue related to such license. Capitalized software development costs are classified as non-current if they relate to titles for which we estimate the release date to be more than one year from the balance sheet date.

The amortization period for capitalized software development costs and license fees is usually no longer than one year from the initial release of the product. If actual revenues or revised forecasted revenues fall below the initial forecasted revenue for a particular license, the charge to cost of sales may be larger than anticipated in any given quarter. The recoverability of capitalized software development costs and license fees is evaluated quarterly based on the expected performance of the specific products to which the costs relate.

When, in management's estimate, future cash flows will not be sufficient to recover previously capitalized costs, we expense these capitalized costs to cost of sales - loss on impairment of capitalized software development costs and license fees - future releases, in the period such a determination is made. These expenses may be incurred prior to a game's release. If a game is cancelled and never released to market, the amount is expensed to operating costs and expenses - loss on impairment of capitalized software development costs and license fees - cancelled games. If we were required to write off licenses or capitalized software development costs, due to changes in market conditions or product acceptance, our results of operations could be materially adversely affected.

License fees and milestone payments made to our third party developers are typically considered non-refundable advances against the total compensation they can earn based upon the sales performance of the products. Any additional royalty or other compensation earned beyond the milestone payments is expensed to cost of sales as incurred.

We expense as research and development costs associated with the development of mobile and social games when we cannot reliably project that future net cash flows from developed games will exceed related development costs. These

games have not earned significant revenues to date and we are continuing to evaluate alternatives for future development and monetization.

Accounting for Stock-Based Compensation. Stock-based compensation expense is measured at the grant date based on the fair value of the award and is recognized as expense over the vesting period. Determining the fair value of stock-based awards at the grant date requires judgment, including, in the case of stock option awards, estimating expected stock volatility. In addition, judgment is also required in estimating the amount of stock-based awards that are expected to be forfeited. If actual results differ significantly from these estimates, stock-based compensation expense and our results of operations could be materially impacted.

Accounting for Preferred Stock and Warrant transactions. We issued units consisting of preferred shares and warrants and common stock and warrants and subsequently remeasured certain of those warrants. Determining the fair value of the securities in these transactions requires significant judgment, including adjustments to quoted share prices and expected stock volatility. Such estimates may significantly impact our results of operations and losses applicable to common stockholders.

Commitments and Contingencies. We record a liability for commitments and contingencies when the amount is both probable and reasonably estimable. We record associated legal fees as incurred. We accrued contingent liabilities for certain potential licensor and customer liabilities and claims that were transferred to Zift but may not be extinguished by such transaction.

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Results of Operations

Year ended October 31, 2016 versus the year ended October 31, 2015

Net Revenues. Net revenues for the year ended October 31, 2016 decreased 77% to approximately \$1.5 million from \$6.7 million for the year ended October 31, 2015. The decrease was due to lower sales of Zumba titles. Additionally, there were no retail sales due to the transfer of the retail distribution channel to Zift in July 2015.

Gross Profit. Gross profit for the year ended October 30, 2016 decreased 62% to approximately \$1.3 million compared to a gross profit of approximately \$3.3 million for the year ended October 31, 2015. The decrease in gross profit reflects lower Zumba and other sales as discussed above, as well as the Company's withdrawal from the packaged software business. Gross profit as a percentage of net revenues was 81% for the year ended October 31, 2016, compared to 49% for the year ended October 31, 2015. The increase in gross profit is due to the dramatically lower cost of sales associated with a digitally sold product.

Product Research and Development Expenses. Product research and development expenses for the year ended October 31, 2016 was approximately \$90,000 compared to \$174,000 for the year ended October 31, 2015. The decrease reflects the general reduction in this activity.

Selling and Marketing Expenses. Total selling and marketing expenses for the year ended October 31, 2016 decreased 98% to approximately \$14,000 compared to approximately \$771,000 for the year ended October 31, 2015. The decrease is primarily due to lower personnel costs and other marketing and distribution activities related to our switch to digital.

General and Administrative Expenses. For the year ended October 31, 2016, general and administrative expenses increased 13% to approximately \$6.0 million compared to \$5.4 million for the year ended October 31, 2015. The increase reflects a \$1.7 million increase in stock based compensation partially offset by lower non-stock based compensation costs, consulting and professional fees and related support expenses. Stock based compensation increased, because during the third quarter of fiscal 2016, a total of 356,666 restricted shares and 347,010 stock options were granted, of which 177,084 restricted stock shares were granted with immediate vesting.

Workforce Reduction. For the year ended October 31, 2015, we incurred workforce reduction costs of \$0.8 million pertaining to severance costs, including primarily severance costs for finance and legal executives and other personnel.

Operating loss. Operating loss for the year ended October 31, 2016 increased 26% to approximately \$4.9 million, compared to an operating loss of approximately \$3.9 million for the year ended October 31, 2015, primarily reflecting a greater decrease in net revenues and gross profit than the expense reductions in development and marketing activities plus an increase in stock based compensation.

Extinguishment of liabilities. During the year ended October 31, 2015, we recognized a gain on extinguishment of liabilities of approximately \$1.5 million. We determined that certain accounts payable balances and claims for license fees and services would never be paid because they were no longer being pursued for payment and had passed the statute of limitations.

Net gains on asset sales and other nonoperating gains. During the year ended October 31, 2015, we recognized approximately \$198,000 in net gain from the sale of certain game rights and from the sale of office furniture and equipment upon the move to a smaller office. Additionally, we recognized \$50,000 from the transfer of retail distribution activities to Zift, a company owned by our former chief executive officer.

Change in fair value of warrant liability. In our December 2014 private placement of units consisting of preferred stock and warrants, we issued warrants containing certain contingent settlement terms not indexed to our own stock. We accounted for the warrants as derivative liabilities and measured their fair value on a quarterly basis and recognized on a current basis any gains or losses. In the year ended October 31, 2015, we recognized a loss of approximately \$1.5 million reflecting an increase in our stock price from the previous measurement date. In our April 19, 2016, equity offering, we issued warrants. We accounted for the warrants as derivative liabilities and measure their fair value on a quarterly basis and recognize on a current basis any gains or losses. In the year ended October 31, 2016, we recognized a gain of approximately \$248,000 reflecting a decrease in our stock price from the previous measurement date.

Income Taxes. In the year ended October 31, 2016, our income tax expense was not significant, representing primarily minimum state income taxes.

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Liquidity and Capital Resources

As of October 31, 2016, our cash and cash equivalents balance was \$6.5 million and our working capital was approximately \$5.4 million, compared to cash and equivalents of \$17.1 million and working capital of \$15.6 million at October 31, 2015.

From fiscal 2013 through the present, we have experienced net cash outflows from operations, generally to fund operating losses due to declining revenues which we attribute to three factors: 1) the introduction of competing “freemium” games on competing handheld devices such as the Apple iPhone or iTouch, and Android powered devices; 2) a shift in game distribution from retail to digital downloads; and 3) a decline in the popularity of motion based fitness games including games we publish under the Zumba fitness brand. As a result of these factors we have reduced our operating expenses, including the reduction of game production and marketing personnel, and have eliminated substantially all of our new game development activities. In 2015, we transferred our retail distribution activities to Zift and transferred related assets and liabilities, including accounts receivable, inventory, customer credits and certain other liabilities.

On December 1, 2016, we entered into an Agreement and Plan of Reorganization (the “Agreement”) with Majesco Acquisition Corp., a Nevada corporation and wholly-owned subsidiary of the Company, PolarityTE, Inc., a Nevada corporation (“Polarity”) and Dr. Denver Lough, the owner of 100% of the issued and outstanding shares of capital stock of Polarity (the “Seller”). The closing is subject to various closing conditions. We believe we have sufficient cash on hand to fund operations through the next year.

Private Placements

The private placements described below were completed in December 2014 and May 2015. A substantial portion of the proceeds of these offerings remained subject to escrow agreements until September 2015, pending the satisfaction of release conditions.

December 2014

On December 17, 2014, pursuant to subscription agreements (the “December Subscription Agreements”) entered into with certain accredited investors (the “December Investors”) the Company completed a private placement of \$6.0 million of units (the “December Units”) at a purchase price of \$0.68 per Unit, with each December Unit consisting of one share of the Company’s 0% Series A Convertible Preferred Stock (each a “Series A Preferred Share”) and a five-year warrant (each a “December Warrant”) to purchase one sixth of a share of the Company’s common stock at an initial exercise price of \$4.08 per share (such issuance and sale, the “December Private Placement”). The December Warrants were subsequently exchanged for shares of the Company’s 0% Series B Convertible Preferred Stock (the “Series B Preferred Shares”) and shares of the Company’s common stock (see below). The offering was made in reliance upon an exemption from registration under Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”).

The Series A Preferred Shares are convertible into shares of common stock based on a conversion calculation equal to the stated value of such Series A Preferred Share, plus all accrued and unpaid dividends, if any, on such Series A Preferred Share, as of such date of determination, divided by the conversion price. The stated value of each Preferred Share is \$0.68 and the initial conversion price is \$4.08 per share, each subject to adjustment for stock splits, stock dividends, recapitalizations, combinations, subdivisions or other similar events. In addition, in the event the Company issues or sells, or is deemed to issue or sell, shares of its common stock at a per share price that is less than the conversion price then in effect, the conversion price shall be reduced to such lower price, subject to certain exceptions. Pursuant to the Certificate of Designations, Preferences and Rights of the 0% Series A Convertible Preferred Stock of Majesco Entertainment Company, the Company is prohibited from incurring debt or liens, or entering into new

financing transactions without the consent of the lead investor (as defined in the December Subscription Agreements) as long as any of the Series A Preferred Shares are outstanding. The Series A Preferred Shares bear no dividends.

The holders of Series A Preferred Shares shall vote together with the holders of common stock on all matters on an as if converted basis, subject to certain conversion and ownership limitations, and shall not vote as a separate class. Notwithstanding the foregoing, the conversion price for purposes of calculating voting power shall in no event be lower than \$3.54 per share. At no time may all or a portion of the Series A Preferred Shares be converted if the number of shares of common stock to be issued pursuant to such conversion would exceed, when aggregated with all other shares of common stock owned by the holder at such time, the number of shares of common stock which would result in such Holder beneficially owning (as determined in accordance with Section 13(d) of the 1934 Act and the rules thereunder) more than 4.99% of all of the common stock outstanding at such time; provided, however, that the holder may waive the 4.99% limitation at which time he may not own beneficially own more than 9.99% of all the common stock outstanding at such time.

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The proceeds of the offering and certificates representing the Series A Preferred Shares and December Warrants were deposited into escrow accounts. Upon the closing of the December Private Placement, \$1.0 million of the proceeds was released to us and \$1.0 million of Series A Preferred Shares and December Warrants, on a pro rata basis, was released to the investors. The remaining \$5.0 million was released by the escrow agent to us and the corresponding \$5.0 million of Series A Preferred Shares and December Warrants were released to the investors in September 2015, in connection with amendments to the December Subscription Agreements.

On April 30, 2015, pursuant to warrant exchange agreements, the holders exchanged for cancellation 1,470,590 December Warrants, including those then held in escrow, for shares of common stock or Series B Preferred Shares. An aggregate of 1,050,421 shares of common stock, which amount includes the shares of common stock issuable upon conversion of the Series B Preferred Shares, were issued or issuable in connection with the exchange agreements.

The Series B Preferred Shares are convertible into shares of common stock based on a conversion calculation equal to the stated value (\$140.00 per share) of the Series B Preferred Shares, plus all accrued and unpaid dividends, if any, divided by the conversion price (initially \$8.40 per share, subject to adjustment). We are prohibited from effecting a conversion of the Series B Preferred Shares to the extent that, as a result of such conversion, such holder would beneficially own more than 4.99% of the number of shares of common stock outstanding, subject to increase, up to 9.99%. Each holder is entitled to vote on all matters submitted to our stockholders on an “as converted basis”, subject to beneficial ownership limitations, based on a conversion price of \$8.40 per share.

May 2015

On May 15, 2015 (the “May Closing Date”), we closed the sale of \$5.05 million of units (the “May Units”), pursuant to separate subscription agreements (the “May Subscription Agreements”) with accredited investors entered into on April 29, 2015, at a purchase price of \$7.20 per May Unit. Each May Unit consists of one share of our common stock, provided that, if the issuance of any such shares would have resulted in the investor owning in excess of 4.99% of our issued and outstanding common stock, then such investor could elect to receive shares of our 0% Series C Convertible Preferred Stock (the “Series C Preferred Shares”), and a three-year warrant (the “May Warrants”) to purchase one share of our common stock at an exercise price of \$8.40 per share (such sale and issuance, the “May Private Placement”).

The Series C Preferred Shares are convertible into shares of common stock based on a conversion calculation equal to the stated value of such Series C Preferred Shares (\$120.00 per share), plus all accrued and unpaid dividends, if any, divided by the conversion price (\$7.20 per share, subject to adjustment). In addition, in the event we issue or sell, or are deemed to issue or sell, shares of our common stock at a per share price that is less than the conversion price then in effect, the conversion price shall be reduced to such lower price, subject to certain exceptions.

Notwithstanding the foregoing, until such time as we obtain the required shareholder approval pursuant to the rules of The NASDAQ Stock Market, LLC, the conversion price of the Series C Preferred Shares shall not be adjusted to a per share price below \$5.16. We are prohibited from effecting a conversion of the Series C Preferred Shares to the extent that, as a result of such conversion, such holder would beneficially own more than 4.99% of the number of shares of common stock subject to increase, up to 9.99%. Each holder is entitled to vote on all matters submitted to our stockholders on an “as converted basis”, subject to the beneficial ownership limitation, based on a conversion price of \$7.20 per share. The Series C Preferred Shares bear no interest and shall rank junior to our Series A Preferred Shares but senior to the Company’s Series B Preferred Shares.

The May Warrants are exercisable, at any time, following the date the May Warrants are issued, at a price of \$8.40 per share, subject to adjustment, and expire three years from the date of issuance. The holders may, subject to certain limitations, exercise the May Warrants on a cashless basis. The Company is prohibited from effecting an exercise of any May Warrant to the extent that, as a result of any such exercise, the holder would beneficially own more than

4.99% of the number of shares of common stock outstanding immediately after giving effect to the issuance of shares of common stock upon exercise of such May Warrant, which beneficial ownership limitation may be increased by the holder up to, but not exceeding, 9.99%.

The proceeds of the May Private Placement along with certificates evidencing the Series C Preferred Shares and Series C Warrants were deposited into an escrow accounts. On the May Closing Date, twenty percent (20%) of the proceeds of the May Private Placement (\$1.01 million) and a corresponding number of Series C Preferred Shares and Series C Warrants were released to us and the investors, respectively. The remaining eighty percent (80%) of the proceeds from the May Private Placement (\$4.04 million) and the corresponding percentage of Series C Preferred Shares and Series C Warrants were released to us and the investors, respectively, in September 2015 in connection with amendments to the May Subscription Agreements.

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September 2015

On September 25, 2015, we entered into amendment agreements to amend the terms of our subscription agreements for the private offerings closed December 17, 2014 and May 15, 2015 to provide for the consent of the lead investor in such offerings to release of all remaining escrowed funds to us (\$5.0 million under the December Private Placement and \$4.04 under the May Private Placement) upon the satisfaction of certain obligations, which we satisfied. Pursuant to the amendment agreements, we were, among other things, required to increase the size of its Board of Directors and appoint thereto, individuals deemed acceptable to the lead investor and approved by The NASDAQ Stock Market, LLC; appoint a new Chief Executive Officer and a new Chief Financial Officer and exchange the Series C Warrants, as described further below. On September 30, 2015 we received \$9.04 million in proceeds from the foregoing release of escrowed funds and the corresponding securities were released to the investors.

In accordance with the aforementioned escrow release conditions, we entered into exchange agreements with holders of our outstanding Series C Warrants pursuant to which each holder received .4 shares of our common stock for each 1 warrant share exchanged for cancellation. At the election of any holder who would, as a result of receipt of the common stock hold in excess of certain beneficial ownership thresholds of our issued and outstanding common stock, such holder could receive shares of our newly designated 0% Series D Convertible Preferred Stock (the “Series D Preferred Shares”). Pursuant to the foregoing exchanges, on September 25, 2015, we issued 0 shares of common stock and 168,333 Series D Preferred Shares convertible into 280,555 shares of common stock in exchange for the cancellation of Series C Warrants to purchase 701,390 shares of common stock. Certain of our officers and directors who held Series C Warrants participated in the exchange.

The Series D Preferred Shares are convertible into shares of common stock based on a conversion ratio equal to the stated value (\$1,000.00 per share) of such Series D Preferred Shares to be converted, plus all accrued and unpaid dividends, if any, divided by the conversion price (\$600.00 per share, subject to adjustment). We are prohibited from effecting a conversion of the Series D Preferred Shares to the extent that, as a result of such conversion, such holder would beneficially own more than 4.99% of the number of shares of Common Stock outstanding, subject to increase, up to, 9.99%. The Series D Preferred Shares bear no interest and rank senior to our common stock but junior to Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares.

On October 15, 2015, our Board of Directors approved a revised version of the Certificate of Designations, Preferences and Rights of our 0% Series D Convertible Preferred Stock in order to remove any voting rights of the Series D Preferred Shares, except as otherwise required by law.

Dividends

On January 4, 2016, we declared a special cash dividend of an aggregate of \$10.0 million to holders of record on January 14, 2016 of its outstanding shares of: (i) common stock (ii) Series A Preferred Shares; (iii) Series B Preferred Shares; (iv) Series C Preferred Shares and (v) Series D Preferred Shares. The holders of record of the Company’s outstanding preferred stock participated in the dividend on an “as converted” basis.

April 2016 Registered Common Stock and Warrant Offering

On April 13, 2016, the Company entered into a Securities Purchase Agreement with certain institutional investors providing for the issuance and sale by the Company of 250,000 shares of the Company’s common stock, par value \$0.001 per share at an offering price of \$6.00 per share, for net proceeds of \$1.4 million after deducting placement agent fees and expenses. In addition, the Company sold to purchasers of common stock in this offering, warrants to purchase 187,500 shares of its common stock. The common shares and the Warrant Shares were offered by the Company pursuant to an effective shelf registration statement on Form S-3, which was initially filed with the

Securities and Exchange Commission on October 22, 2015 and declared effective on December 7, 2015. The closing of the offering occurred on April 19, 2016.

Each Warrant is immediately exercisable for two years, but not thereafter, at an exercise price of \$6.90 per share. Subject to limited exceptions, a holder of warrants will not have the right to exercise any portion of its warrants if the holder, together with its affiliates, would beneficially own in excess of 4.99% of the number of shares of our common stock outstanding immediately after giving effect to such exercise. The exercise price and number of warrants are subject to adjustment in the event of any stock dividends and splits, reverse stock split, stock dividend, recapitalization, reorganization or similar transaction.

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Off-Balance Sheet Arrangements

As of October 31, 2016, we had no off-balance sheet arrangements.

Inflation

Our management currently believes that inflation has not had, and does not currently have, a material impact on continuing operations.

Cash Flows

Cash and cash equivalents were \$6.5 million as of October 31, 2016 compared to \$17.1 million at October 31, 2015 and working capital as of October 31, 2016 was \$5.4 million compared to \$15.6 million at October 31, 2015.

Operating Cash Flows. Our principal operating source of cash is revenue from distribution of our interactive entertainment products, net of royalty and revenue-share payments to licensors, developers and publishers. During fiscal 2015, we reduced our development and marketing activities and distributed a greater number of games published by others, compared to prior years. Accordingly, the portion of operating cash flows used for associated working capital requirements, including pre-release development and costs incurred to manufacture, sell and market our games has generally been reduced. We incurred \$1.6 million of cash outflows from operations during the year ended October 31, 2015, primarily reflecting operating losses and the settlement in cash of certain outstanding royalty and customer-credit liabilities, partially offset by the liquidation of prior inventory balances and collection of accounts receivable. We incurred \$1.8 million of cash outflows from operations during the year ended October 31, 2016, primarily reflecting current operating losses, partially offset by non-cash compensation expense.

Investing Cash Flows. Cash provided by investing activities in the year ended October 31, 2015 amounted to approximately \$540,000, primarily reflecting proceeds from the sale of certain game rights and the collection of certain outstanding advances to GMS.

Financing Cash Flows. Net cash used in financing activities for the year ended October 31, 2016 amounted to approximately \$8.8 million, mainly related to a payment of a \$10.0 million special cash dividend, partially offset by an equity capital raise of approximately \$1.4 million. Net cash provided by financing activities for the year ended October 31, 2015 reflects \$10.9 million of net proceeds from private placements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

As a smaller reporting company, we are not required to provide the information under this item, pursuant to Regulation S-K Item 305(e).

Item 8. Financial Statements and Supplementary Data.

The financial statements required by Item 8 are submitted in a separate section of this report, beginning on Page F-1, are incorporated herein and made a part hereof.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as defined in Exchange Act Rules 13a-15(e) and 15d-15(e), as of the end of the period covered by this report.

In designing and evaluating our disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

No system of controls can prevent errors and fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur. Controls can also be circumvented by individual acts of some people, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with its policies or procedures. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

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Subject to the limitations above, management believes that the consolidated financial statements and other financial information contained in this report, fairly present in all material respects our financial condition, results of operations, and cash flows for the periods presented.

Based on the evaluation of the effectiveness of our disclosure controls and procedures, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) were effective at a reasonable assurance level.

During the current period, we enhanced our internal control over financial reporting by employing an external firm on a contract services basis. This firm specializes in providing finance and accounting functions for small companies, and the founders and senior managers are highly experienced former employees of national accounting firms.

Management's Annual Report on Internal Control Over Financial Reporting. Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States of America, or GAAP. Our internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect transactions involving our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that our receipts and expenditures are being made only in accordance with the authorization of our management; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

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

Management assessed the effectiveness of our internal control over financial reporting as of October 31, 2016. In making this assessment, management used the framework set forth in the report entitled Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013, or COSO. The COSO framework summarizes each of the components of a company's internal control system, including (i) the control environment, (ii) risk assessment, (iii) control activities, (iv) information and communication, and (v) monitoring. Based on this evaluation, management determined that our system of internal control over financial reporting was effective as of October 31, 2016.

There were no changes to internal controls over financial reporting during the most recent quarter.

This annual report does not include an attestation report of the Company's registered independent public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered independent public accounting firm pursuant to rules of the Securities and Exchange Commission that permit the Company to provide only management's report in the Annual Report on Form 10-K.

Item 9B. Other Information.

None.

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PART III

The information required by Part III of Form 10-K under the items listed below are incorporated by reference from our definitive proxy statement relating to the 2016 Annual Meeting of Stockholders, which we will file with the SEC within 120 days after our October 31, 2016 fiscal year end.

Item 10 - Directors, Executive Officers and Corporate Governance.

Item 11 - Executive Compensation.

Item 12 - Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Item 13 - Certain Relationships and Related Transactions and Director Independence.

Item 14 - Principal Accountant Fees and Services.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(1) Financial Statements.

The financial statements required by item 15 are submitted in a separate section of this report, beginning on Page F-1, incorporated herein and made a part hereof.

(2) Financial Statement Schedules.

Schedules have been omitted because of the absence of conditions under which they are required or because the required information is included in the financial statements or notes thereto.

(3) Exhibits.

The following exhibits are filed with this report, or incorporated by reference as noted:

- 2.1 Agreement and Plan of Reorganization (incorporated by reference to Exhibit 2.1 to our Form 8-K filed with the Commission on December 7, 2016)
- 3.1 Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q filed on September 15, 2014).
- 3.2 Restated Bylaws (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed on June 17, 2005).
- 3.3 Certificate of Designations, Preferences and Rights of the 0% Series A Convertible Preferred Stock of Majesco Entertainment Company (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed on December 18, 2014)
- 3.4 Certificate of Designations, Preferences and Rights of the 0% Series B Convertible Preferred Stock of Majesco Entertainment Company (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed on April 30, 2015)
- 3.5 Certificate of Designations, Preferences and Rights of the 0% Series C Convertible Preferred Stock of Majesco Entertainment Company (incorporated by reference to Exhibit 4.4 to our Current Report on Form 8-K filed on June 9, 2015)

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- 3.6 Certificate of Designations, Preferences and Rights for 0% Series D Convertible Preferred Stock (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed on October 20, 2015)
- 3.7 Certificate of Amendment to Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to our Form 8-K filed with the Commission on July 29, 2016)
- 3.8 Form of Certificate of Designation of Series E Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to our Form 8-K filed with the Commission on December 7, 2016)
- 4.1 Form of Common Stock Purchase Warrant issued to investors (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed on December 18, 2014).
- 4.2 Form of Warrant (incorporated by reference to Exhibit 10.1 to our Form 8-K filed with the Commission on April 14, 2016)
- #10.1 Form of Non-Qualified Stock Option Agreement (incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q filed on June 14, 2005).
- #10.2 Form of Incentive Stock Option Agreement (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q filed on June 14, 2005).
- 10.3 Form of Personal Indemnification Agreement (incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q filed on June 15, 2009).
- 10.4 First Amendment to the Confidential License Agreement for the Wii Console (Western Hemisphere), effective January 4, 2010, by and between Nintendo of America Inc. and Majesco Entertainment Company (incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q filed on June 14, 2010).
- 10.5 Add On Content Addendum to the Confidential License Agreement for the Wii Console, effective November 2, 2009, by and between Nintendo of America Inc. and Majesco Entertainment Company (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q filed on June 14, 2010).
- 10.6 Second Amendment to the Confidential License Agreement for the Wii Console, effective February 20, 2013, by and between Nintendo of America Inc. and Majesco Entertainment Company (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on February 21, 2013).
- 10.7 Intentionally omitted.
- 10.8 XBOX 360 Publisher License Agreement, effective September 13, 2005, by and between Microsoft Licensing, GP and Majesco Entertainment Company (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q filed on September 14, 2011).
- +10.9 Amendment to the XBOX 360 Publisher License Agreement (2008 renewal, etc.), effective September 1, 2009, by and between Microsoft Licensing, GP and Majesco Entertainment Company (incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q filed on September 14, 2011).
- +10.10 Amendment to the XBOX 360 Publisher License Agreement (Russian Incentive Program, Hits Program Revisions), effective February 4, 2010, by and between Microsoft Licensing, GP and Majesco Entertainment Company (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q filed on September 14, 2011).
- #10.11 Amended and Restated 2004 Employee, Director and Consultant Incentive Plan (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on April 24, 2012).

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- #10.12 Amended and Restated 2004 Employee, Director and Consultant Incentive Plan (incorporated by reference to Exhibit 10.1 to our Form 8-K filed with the Commission on May 1, 2014).
- 10.13 Form of December 2014 Subscription Agreement between the Company and investors (incorporated by reference to Exhibit 10.1 to our form 8-k filed with the commission on September 21, 2015).
- 10.14 Form of December 2014 Registration Rights Agreement between the Company and investors (incorporated by reference to Exhibit 10.2 to our form 8-k filed with the commission on December 18, 2014).
- #10.15 2014 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on April 1, 2015).
- 10.16 Form of May 2015 Subscription Agreement between the Company and Investors (incorporated by reference to Exhibit 10.1 to our form 8-k filed with the commission on May 21, 2015)
- 10.17 Form of May 2015 Registration Rights Agreement between the Company and investors (incorporated by reference to Exhibit 10.2 to our form 8-k filed with the commission on May 21, 2015).
- #10.19 Separation Agreement between Majesco Entertainment Company and Jesse Sutton, dated as of July 27, 2015 (incorporated by reference to Exhibit 10.2 to our form 8-k filed with the commission on July 28, 2015)
- 10.20 Agreement of Conveyance, Transfer and Assignment of Assets and Assumption of Obligations between the Company and Zift Interactive LLC (incorporated by reference to Exhibit 10.1 to our form 8-k filed with the commission on August 6, 2015)
- 10.21 Stock Purchase Agreement for Zift Interactive LLC between the Company and Jesse Sutton (incorporated by reference to Exhibit 10.2 to our form 8-k filed with the commission on August 6, 2015)
- 10.22 Amendment Agreement for Subscription Agreement dated December 17, 2014 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on October 1, 2015)
- 10.23 Amendment Agreement for Subscription Agreement dated May 15, 2015 (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on October 1, 2015)
- 10.24 Form of Exchange Agreement dated September 30, 2015 (incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K filed on October 1, 2015)
- #10.25 Executive Employment Agreement with Barry Honig (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed on October 1, 2015)
- #10.26 Executive Employment Agreement with John Stetson (incorporated by reference to Exhibit 10.5 to our Current Report on Form 8-K filed on October 1, 2015)
- #10.27 Restricted Stock Agreement with Barry Honig (incorporated by reference to Exhibit 10.6 to our Current Report on Form 8-K filed on October 1, 2015)
- #10.28 Restricted Stock Agreement with John Stetson (incorporated by reference to Exhibit 10.7 to our Current Report on Form 8-K filed on October 1, 2015)
- #10.29 Restricted Stock Agreement with Michael Brauser (incorporated by reference to Exhibit 10.8 to our Current Report on Form 8-K filed on October 1, 2015)
- #10.30 Restricted Stock Agreement with Mohit Bhansali (incorporated by reference to Exhibit 10.9 to our Current Report on Form 8-K filed on October 1, 2015)
- #10.31 Restricted Stock Agreement with Edward Karr (incorporated by reference to Exhibit 10.10 to our Current Report on Form 8-K filed on October 1, 2015)
- #10.32 Restricted Stock Agreement with Andrew Kaplan (incorporated by reference to Exhibit 10.11 to our Current Report on Form 8-K filed on October 1, 2015)
- 10.33 Form of Securities Purchase Agreement (incorporated by reference to Exhibit 10.1 to our Form 8-K filed with the Commission on April 14, 2016)
- 10.34 Placement Agency Agreement (incorporated by reference to Exhibit 10.1 to our Form 8-K filed with the Commission on April 14, 2016)
- 10.35 Employment Agreement (incorporated by reference to Exhibit 10.1 to our Form 8-K filed with the Commission on December 7, 2016)
- 10.36

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- Employment Agreement (incorporated by reference to Exhibit 10.2 to our Form 8-K filed with the Commission on December 7, 2016)
- 10.37 Form of Equity Incentive Plan (incorporated by reference to Exhibit 10.3 to our Form 8-K filed with the Commission on December 7, 2016)
- 10.38 Stockholders Agreement (incorporated by reference to Exhibit 10.4 to our Form 8-K filed with the Commission on December 7, 2016)
- 10.39 Voting Agreement (incorporated by reference to Exhibit 10.5 to our Form 8-K filed with the Commission on December 7, 2016)
- 10.40 Warrant Bill of Sale of Laboratory Equipment (incorporated by reference to Exhibit 10.6 to our Form 8-K filed with the Commission on December 7, 2016)
- 10.41 Lease by and Between the Company and Paradigm Resources LC (incorporated by reference to Exhibit 10.7 to our Form 8-K filed with the Commission on December 7, 2016)
- 10.42 Form of Subscription Agreement (incorporated by reference to Exhibit 10.1 to our Form 8-K filed with the Commission on December 16, 2016)
- 10.43 Form of Registration Rights Agreement (incorporated by reference to Exhibit 10.2 to our Form 8-K filed with the Commission on December 16, 2016)
- 10.44 Form of First Amendment to Agreement and Plan of Reorganization (incorporated by reference to Exhibit 10.3 to our Form 8-K filed with the Commission on December 16, 2016)
- *21.1 Subsidiaries
- *23.1 Consent of EisnerAmper LLP
- *31.1 Certification of Principal Executive Officer
- *31.2 Certification of Principal Financial Officer
- *32.1 Section 1350 Certificate of President and Chief Financial Officer
-
- *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 Labels Linkbase Document
- *101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

Constitutes a management contract, compensatory plan or arrangement.

± We have requested confidential treatment of certain provisions contained in this exhibit. The copy filed as an exhibit omits the information subject to the confidentiality request.

* Filed herewith.

(b) Exhibits.

See (a)(3) above.

(c) Financial Statement Schedules.

See (a)(2) above.

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SIGNATURES

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

MAJESCO ENTERTAINMENT COMPANY AND
SUBSIDIARY

By: /s/ Denver Lough
Chief Executive Officer (Principal Executive Officer)

Date: December 29, 2016

By: /s/ John Stetson
Chief Financial Officer (Principal Financial and Accounting Officer)

Date: December 29, 2016

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

Signature	Title	Date
/s/ Denver Lough Denver Lough	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	December 29, 2016
/s/ John Stetson John Stetson	Chief Financial Officer and Director (Principal Financial and Accounting Officer)	December 29, 2016
/s/ Edward Swanson Edward Swanson	Chief Operating Officer and Director	December 29, 2016
/s/ Michael Brauser Michael Brauser	Director	December 29, 2016
/s/ Michael Beeghley Michael Beeghley	Director	December 29, 2016
/s/ Mohit Bhansali Mohit Bhansali	Director	December 29, 2016

/s/ Barry Honig

Director

December
29, 2016

Barry Honig

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
Majesco Entertainment Company

We have audited the accompanying consolidated balance sheets of Majesco Entertainment Company and Subsidiary (the "Company") as of October 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for each of the years then ended. The financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Majesco Entertainment Company and Subsidiary as of October 31, 2016 and 2015, and the consolidated results of their operations and their cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America.

/s/ EISNERAMPER LLP

Iselin, New Jersey
December 29, 2016

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Table of ContentsMAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share amounts)

	October 31, 2016	October 31, 2015
ASSETS		
Current assets:		
Cash and cash equivalents	\$6,523	\$17,053
Accounts receivable, net	113	283
Capitalized software development costs and license fees	50	179
Prepaid expenses and other current assets	47	101
Total current assets	6,733	17,616
Property and equipment, net	18	45
Total assets	\$6,751	\$17,661
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	\$1,284	\$1,686
Warrant liability	70	-
Payable to Zift	-	318
Total current liabilities	1,354	2,004
Total liabilities	1,354	2,004
Commitments and contingencies		
Stockholders' equity:		
Convertible Preferred stock - 10,000,000 shares authorized, 7,374,454 and 9,025,265 shares issued and outstanding at October 31, 2016 and 2015, respectively, aggregate liquidation preference \$4,854 and \$5,968, respectively	10,153	10,694
Common stock - \$.001 par value; 250,000,000 shares authorized; 2,782,963 and 1,851,503 shares issued and outstanding at October 31, 2016 and 2015, respectively	3	2
Additional paid-in capital	123,417	128,497
Accumulated deficit	(128,176)	(123,536)
Total stockholders' equity	5,397	15,657
Total liabilities and stockholders' equity	\$6,751	\$17,661

See accompanying notes

Table of ContentsMAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except share and per share amounts)

	Years Ended October 31,	
	2016	2015
Net revenues	\$1,542	\$6,693
Cost of sales		
Product costs	1	2,328
Software development costs and license fees	285	1,095
	286	3,423
Gross profit	1,256	3,270
Operating costs and expenses		
Product research and development	90	174
Selling and marketing	14	771
General and administrative	6,031	5,350
Workforce reduction	-	840
Depreciation and amortization	27	61
	6,162	7,196
Operating loss	(4,906)	(3,926)
Other expenses (income)		
Interest and financing costs (income)	(18)	45
Gain on extinguishment of liabilities	-	(1,465)
Gain on asset sales, net	-	(50)
Other non-operating gains, net	-	(198)
Change in fair value of warrant liability	(248)	1,548
Loss before income taxes	(4,640)	(3,806)
Income taxes	-	3
Net loss	(4,640)	(3,809)
Special cash dividend attributable to preferred stockholders	(6,002)	-
Conversion features accreted as dividends	-	(2,252)
Net loss attributable to common shareholders	\$(10,642)	\$(6,061)
Net loss per share, basic and diluted	\$(5.08)	\$(4.93)
Weighted average shares outstanding, basic and diluted	2,096,022	1,228,275

See accompanying notes

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
 CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
 (in thousands, except share and per share amounts)

	Preferred Stock		Common Stock		Additional Paid-In Capital		Accumulated Deficit	Net
	Number	Amount	Number	Amount	Capital	Deficit		Stockholders' Equity
Balance - October 31, 2014			1,103,397	\$7	\$125,271	\$the portion of the officer's current annual base salary and bonuses which have accrued through the date of termination;		
						vested stock options; and		
						payment for accrued but unused vacation.		

In addition, immediately before a Change of Control Transaction, all stock options granted pursuant to our 2010 Equity Incentive Plan will vest and become fully exercisable. For this purpose, a "Change of Control Transaction" means the occurrence of any of the following events: (i) any person becomes the beneficial owner, directly or indirectly, of securities of NutraCea representing fifty percent (50%) or more of the total voting power represented by NutraCea's then-outstanding voting securities; (ii) the consummation of the sale or disposition by NutraCea of all or substantially all of NutraCea's assets; or (iii) the consummation of a merger or consolidation of NutraCea or a subsidiary with another corporation or any other entity, other than a merger or consolidation which results in the voting securities of NutraCea outstanding immediately prior thereto continuing to represent at least fifty percent (50%) of the total voting power represented by the voting securities of NutraCea or such surviving entity or its parent outstanding immediately after such merger or consolidation.

The amount of compensation payable to Kody Newland upon his termination is discussed above. In addition to the consideration described above, the amount of compensation payable to each other named executive officer following termination or a change of control is discussed below.

John Short

Termination for Disability In the event NutraCea terminates Mr. Short's employment because of his Disability, Mr. Short is entitled to a lump sum cash payment equal to all reasonable moving expenses incurred by Mr. Short to relocate his family and personal possessions to Bend, Oregon.

"Disability" is defined as Mr. Short's substantial inability to perform his duties under this Agreement for a continuous period of 90 days or longer, or for 120 days or more in any 12-month period, due to a physical or mental disability.

Termination Without Cause, for Good Reason, Non-renewal of Employment Agreement, for Death or for Work Related Disability In the event Mr. Short employment is terminated (i) by NutraCea other than for "cause" (ii) because we elect to not renew his employment agreement at the end of its term, (iii) Mr. Short terminates his employment for

“good reason”, (iv) due to Mr. Short’s death or (v) due to Mr. Short’s “work related disability”, Mr. Short shall be entitled to:

- a cash lump sum payment equal to the greater of (i) the base salary and annual bonuses that Mr. Short would have been paid had he remained employed for the remainder of the then current term or (ii) the base salary and annual bonuses that Mr. Short would have been paid if he remained an employee for 12 months following the date of termination;
- three of his options to purchase a total of 5,000,000 shares of common stock shall immediately vest in full and remain exercisable for 2 years following the date of termination; and
- a cash lump sum payment equal to all reasonable moving expenses incurred by Mr. Short to relocate his family and personal possessions to Bend, Oregon.

“Cause” is defined as (i) a material breach of the terms of his employment agreement, which remains uncured for 30 days after written notice of the breach is delivered to Mr. Short, (ii) Mr. Short has been grossly negligent or has engaged in material willful or gross misconduct in the performance of his duties, (iii) Mr. Short has committed, as determined by our Board of Directors in good faith, or has been convicted of fraud, moral turpitude, embezzlement, theft, other criminal conduct or any felony, (iv) Mr. Short habitually misuses alcohol, drugs, or any controlled substance, or (v) Mr. Short breaches his proprietary information agreement with us.

“Good Reason” is defined as (i) any material breach by NutraCea of Mr. Short’s employment agreement; (ii) a material reduction of his duties or responsibilities, or the assignment of duties or responsibilities to Mr. Short that are not consistent or commensurate with his position as Chief Executive Officer or (iii) any reduction of Mr. Short’s base salary.

“Work-Related Disability” shall mean that Mr. Short, due to a physical disability that arises out of or is incurred in connection with his employment for NutraCea, has been substantially unable to perform his duties under this Agreement for a continuous period of 90 days or longer, or for 120 days or more in any 12 month period; provided, that a “Work-Related Disability” shall not include a disability arising from, or resulting from, stress, mental, nervous, behavioral or emotional disorders, or related conditions or from alcohol, drug, or controlled substance abuse or misuse.

Termination in Connection With a Change of Control. In the event that Mr. Short resigns or is terminated within 60 days before and 90 days after a Change of Control, Mr. Short shall be entitled to:

- a cash lump sum payment equal to the greater of (i) the base salary and annual bonuses that Mr. Short would have been paid had he remained employed for the remainder of the then current term or (ii) the base salary and annual bonuses that Mr. Short would have been paid if he remained an employee for 12 months following the date of termination (such amount, his “Severance Payment);
- three of his options to purchase a total of 5,000,000 shares of common stock shall immediately vest in full and remain exercisable for 2 years following the date of termination;
- a cash lump sum payment equal to all reasonable moving expenses incurred by Mr. Short to relocate his family and personal possessions to Bend, Oregon; and
- a cash lump sum payment equal to the difference between (i) two times the sum of Mr. Short’s base salary and target bonus level for the year in which the termination occurs and (ii) an amount equal to the Severance Payment.

“Change of Control” is defined as the occurrence of any of the following events: (x) the consummation of a merger or consolidation of NutraCea with any other entity which results in the voting securities of NutraCea outstanding immediately prior thereto failing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the total voting power represented by the voting securities of NutraCea or such surviving entity outstanding immediately after such merger or consolidation, or (y) the sale, mortgage, lease or other transfer in one or more transactions not in the ordinary course of NutraCea’s business of assets or earning power constituting more than fifty percent (50%) of the assets or earning power of NutraCea and its subsidiaries (taken as a whole) to any such person or group of persons.

Acceleration of Stock Options in Connection with a Change of Control Transaction. Immediately prior to a Change of Control Transaction, Mr. Short’s stock option to purchase 5,000,000 shares granted under our 2010 Equity Incentive Plan shall immediately vest and be exercisable in full.

Leo G. Gingras

Termination Without Cause, Resignation for Good Reason or Death. In the event Mr. Gingras’ employment is terminated without “cause,” he resigns for “good reason” or he dies, Mr. Gingras is entitled to:

- a lump sum cash payment equal to 100% of his base salary through the end of the term of the agreement; and
- immediate vesting of all unvested shares under his option to purchase 1,500,000 shares of common stock.

“Cause” is defined as (i) a breach of a material term of his employment agreement, which remains uncured for thirty days after a written notice of breach and written demand for performance are delivered to Mr. Gingras; (ii) Mr. Gingras has been grossly negligent or engagement in material willful or gross misconduct in the performance of his

duties; (iii) Mr. Gingras has committed, as reasonably determined by our Board of Directors, or has been convicted by a court of law of, fraud, moral turpitude, embezzlement, other similar criminal conduct, or any felony; (iv) habitual misuse of alcohol, drugs or any controlled substance; or (v) Mr. Gingras' breach of his proprietary information agreement with NutraCea or failure to comply with reasonable written standards established by NutraCea for the performance of his duties.

"Good Reason" is defined as (i) any material breach by NutraCea of his employment agreement; (ii) a material reduction of his duties or responsibilities (or the assignment of duties or responsibilities to him that are) not consistent or commensurate with his position as Chief Operating Officer of NutraCea; or (iii) and reduction of his salary other than as part of a general reduction of the salaries of all or substantially all of our employees.

Termination in Connection with a Change in Control. In the event Mr. Gingras or NutraCea terminates Mr. Gingras' employment with NutraCea within 60 days before and 90 days after a "change in control", his option to purchase 1,500,000 shares will immediately vest and become exercisable.

“Change in control” is defined as (i) our merger or consolidation with any other entity which results in our voting stock outstanding immediately before the transaction failing to represent more than fifty percent (50%) of the total voting power represented by the surviving entity immediately after the merger or consolidation or (ii) our sale or transfer of all or substantially all of our assets in one or more related transactions not in the ordinary course of business.

Acceleration of Stock Options in Connection with a Change of Control Transaction. Immediately prior to a Change of Control Transaction, Mr. Gingras’ stock option to purchase 4,500,000 shares granted under our 2010 Equity Incentive Plan shall immediately vest and be exercisable in full.

Jerry Dale Belt

Termination without Cause, for Nonrenewal of Employment Agreement, for Good Reason, or Death. In the event Mr. Belts’ employment is terminated (i) by NutraCea other than for Cause, (ii) because we elect to not renew his employment agreement at the end of its term, (iii) by Mr. Belt for Good Reason, or (iv) due to Mr. Belt’s death, Mr. Belt shall be entitled to a cash lump sum payment in an amount equal to the base salary that Mr. Belt would have been paid had he remained employed with NutraCea for the 180 day period following the date of his termination

“Cause” is defined as (i) a material breach of the terms of his employment agreement, which breach remains uncured for 30 days following notice of breach, (ii) Mr. Belt has been grossly negligent or has engaged in material willful or gross misconduct in the performance of his duties, (iii) Mr. Belt has committed, as reasonably determined by our Board of Directors, or has been convicted by a court of law of fraud, moral turpitude, embezzlement, theft, or similar criminal conduct, or any felony, (iv) Mr. Belt habitually misuses alcohol, drugs, or any controlled substance, (v) Mr. Belt breaches his proprietary information agreement with NutraCea, or (vi) Mr. Belt fails to meet reasonable written standards established by us for performance of his duties under his employment agreement.

“Good Reason”, is defined as (i) any material breach by NutraCea of any provision of Mr. Belt’s employment agreement; (ii) a material reduction of Mr. Belt’s duties or responsibilities, or the assignment of duties or responsibilities to Mr. Belt that are not consistent or commensurate with and his position as Chief Financial Officer or (iii) any reduction of Mr. Belt’s base salary other than as part of a general reduction of the salaries of all or substantially all of NutraCea’s employees.

Acceleration of Stock Options in Connection with a Change of Control Transaction. Immediately prior to a Change of Control Transaction, Mr. Belt’s stock option to purchase 2,500,000 shares granted under our 2010 Equity Incentive Plan shall immediately vest and be exercisable in full.

Colin Garner

Termination Without Cause. In the event we terminate Mr. Garner without “cause”, Mr. Garner shall be entitled to:

- a lump sum cash payment equal to 90 days’ salary;
- NutraCea will pay premiums for health insurance coverage for 90 days; and
- all stock options scheduled to vest in the 90 days following his termination shall immediately vest and become exercisable.

“Cause” is defined as (i) a material breach of the terms of his employment agreement, (ii) a determination by the Board of Directors that Mr. Garner has been grossly negligent or has engaged in material willful or gross misconduct in the performance of his duties, (iii) Mr. Garner having failed to meet written standards established by us for performance

of duties under the employment agreement, (iv) Mr. Garner has committed, as determined by our Board of Directors, or has been convicted of fraud, moral turpitude, embezzlement, theft, or dishonesty or other criminal conduct, or (v) Mr. Garner habitually misuses alcohol or any non prescribed drug.

Acceleration of Stock Options in Connection with a Change of Control Transaction. Immediately prior to a Change of Control Transaction, Mr. Garner's stock option to purchase 1,000,000 shares granted under our 2010 Equity Incentive Plan shall immediately vest and be exercisable in full.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table set forth certain information regarding beneficial ownership of our common stock as of March 31, 2011, by (i) each person or entity who is known by us to own beneficially more than 5% of the outstanding shares of that class or series of our stock, (ii) each of our directors, (iii) each of the named executive officers, and (iv) all directors and executive officers as a group.

The table is based on information provided to us or filed with the SEC by our directors, executive officers and principal shareholders. Beneficial ownership is determined in accordance with the rules of the SEC, and includes voting and investment power with respect to shares. Shares of common stock issuable upon exercise of options and warrants that are currently exercisable or are exercisable within 60 days after March 31, 2011, are deemed outstanding for purposes of computing the percentage ownership of the person holding such options or warrants, but are not deemed outstanding for computing the percentage of any other shareholder. Unless otherwise indicated, the address for each shareholder listed in the following table is c/o NutraCea, 6720 N. Scottsdale Rd, Suite 390, Scottsdale, AZ 85253.

Name and Address of Beneficial Owner	(1)	Shares of Common Stock Beneficially Owned	
		Number	Percentage (1)
John Peebles (2) 3733 Wesley Ridge Dr, Apex, NC 27539		14,731,800	7.5 %
W. John Short (3)		5,224,900	2.6 %
David S. Bensol (4)		835,375	*
Richard H. Koppes (5)		15,625	*
James C. Lintzenich (6)		2,222,608	1.1 %
Edward L. McMillan (7)		844,038	*
Steven W. Saunders (8)		2,399,297	1.2 %
Kenneth L. Shropshire (9)		749,500	*
John J. Quinn (10)		370,139	*
Jerry Dale Belt (11)		1,218,750	*
Colin Garner (12)		166,667	*
Leo G. Gingras (13)		3,165,500	1.6 %
Kody Newland (14)		610,033	*
All directors and executive officers as a group (12 persons) (15)		17,822,432	8.5 %

* less than 1%

- (1) Applicable percentage of ownership is based on 195,717,735 shares of our common stock outstanding as of March 31, 2011, together with applicable options and warrants for such shareholder exercisable within 60 days of March 31, 2011, which is May 30, 2011.
- (2) As of December 31, 2010, John L.T. Peebles claims sole voting and dispositive power as to 12,981,800 shares and shared voting and dispositive power as to 1,750,000 shares. Information provided herein is based solely upon Mr. Peebles Schedule 13G filed on February 8, 2011.
- (3) Includes 4,975,000 shares issuable upon exercise of options.
- (4) Includes 782,875 shares issuable upon exercise of options.
- (5) Includes 15,625 shares issuable upon exercise of options.
- (6) Includes 826,197 shares issuable upon exercise of options.
- (7) Includes 826,298 shares issuable upon exercise of options.
- (8) Includes 930,495 shares issuable upon exercise of options.
- (9) Includes 749,500 shares issuable upon exercise of options.

- (10) Includes 370,139 shares issuable upon exercise of options.
- (11) Includes 1,218,750 shares issuable upon exercise of options.
- (12) Includes 166,667 shares issuable upon exercise of options.
- (13) Includes 3,112,500 shares issuable upon exercise of options.
- (14) Includes 583,333 shares issuable upon exercise of options.
- (15) Includes 14,557,379 shares issuable upon exercise of options.

Equity Compensation Plan Information

The following table sets forth, as of December 31, 2010, information with respect to our 2003 Stock Plan, 2005 Equity Incentive Plan and 2010 Equity Incentive Plan, and with respect to certain other options and warrants, as follows:

Plan Category	Number of securities		Number of securities
	to be issued upon exercise of outstanding options and warrants and rights reflected in column a)	Weighted average exercise price of outstanding options and warrants and rights reflected in column a)	remaining available for future issuance under equity compensation plans (excluding securities reflected in column a)
	(a)	(b)	(c)
Equity compensation plans approved by shareholders (1)	9,553,875	\$ 0.28	396,125
Equity compensation plans not approved by shareholders	38,931,236	0.30	2,321,540 (2)
Total	48,485,111	\$ 0.30	2,717,665

(1) Represents shares reserved for future issuance under our 2005 Equity Incentive Plan.

(2) Represents shares reserved for future issuance under our 2003 Stock Compensation Plan and 2010 Equity Incentive Plan.

On October 31, 2003, the Board of Directors approved and adopted the 2003 Stock Compensation Plan and authorized the President of NutraCea to execute a registration statement under the Securities Act of 1933 for 10,000,000 shares of common stock. As of December 31, 2010, 9,666,207 shares of common stock and no options have been issued under the 2003 Stock Compensation Plan.

A description of our 2005 Equity Incentive Plan and 2010 Equity Incentive Plan is set forth above under "Equity Compensation Arrangements".

As of December 31, 2010, options to purchase a total of 35,931,236 shares of our common stock were outstanding pursuant to compensation arrangements that have not been approved by our shareholders. The per share exercise prices of these options vary from \$0.20 to \$10.00. Of these options to purchase 35,931,236 shares, as of December 31, 2010, options to purchase a total of 13,000,000 shares are held by the named executive officers (See table titled "Outstanding Equity Awards as of December 31, 2010" above) and options to purchase a total of 4,343,427 shares of common stock held by our current non-employee directors (for directors Bensol, Lintzenich, McMillan, Quinn, Saunders and Shropshire options to purchase 670,000, 785,197, 746,798, 432,639, 1,038,793, and 670,000 shares, respectively). Of the options to purchase 4,343,427 shares held by our non-employee directors, options to purchase a total of 460,788 shares held by directors McMillan, Lintzenich and Saunders were assumed by us when we acquired RiceX in October 2005.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Review, Approval or Ratification of Transactions with Related Parties

As provided in our Audit Committee charter, our Audit Committee reviews and approves, unless otherwise approved by our Compensation Committee, any transaction or series of similar transactions to which we were or are to be a party in which the amount involved exceeds \$120,000 and in which any director, director nominee, executive officer or holder of more than 5% of any class of our capital stock, or members of any such person's immediate family, had or will have a direct or indirect material interest (each such transaction, a Related Party Transaction). Each Related Party Transaction that occurred since January 1, 2010, has been approved by our Audit Committee or Compensation Committee.

Related Party Transactions

Other than compensation described above in "Executive Compensation", we believe that there have been no Related Party Transactions since January 1, 2010.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, requires NutraCea's directors, executive officers and beneficial owners of more than 10% of a registered class of NutraCea's equity securities to file with the Securities and Exchange Commission (SEC), initial reports of ownership and reports of changes in ownership of NutraCea's common stock and other equity securities. Directors, executive officers and greater than 10% beneficial owners are required by SEC regulation to furnish NutraCea with copies of all Section 16(a) reports they file. Based solely on the review of the copies of such forms furnished to NutraCea and written representations that no other reports were required, NutraCea believes that all reporting requirements under Section 16(a) for the fiscal year ended December 31, 2010 were met in a timely manner by the directors, executive officers and greater than 10% beneficial owners, except as follows:

Name of Reporting Person	Form Required	Type of Transaction	Number of Shares Subject to Options	Transaction Date	Date Form Filed
David S. Bensol	Form 4	Option Grant	250,000	1/1/2010	7/1/2010
Edward L. McMillan	Form 4	Option Grant	250,000	1/1/2010	7/1/2010
James C. Lintzenich	Form 4	Option Grant	250,000	1/1/2010	7/2/2010
Kenneth L. Shropshire	Form 4	Option Grant	250,000	1/1/2010	7/2/2010
Steven W. Saunders	Form 4	Option Grant	250,000	1/1/2010	7/1/2010
William Cadigan	Form 4	Option Grant	300,000	2/24/2010	Not Yet Filed
John J. Quinn	Form 3	Appointment as Director	-	4/8/2010	5/27/2010
John J. Quinn	Form 4	Option Grant	182,639	4/8/2010	7/1/2010
Jerry Dale Belt	Form 4	Option Grant	2,500,000	6/15/2010	7/2/2010
David S. Bensol	Form 4	Option Grant	250,000	7/7/2010	7/19/2010
Edward L. McMillan	Form 4	Option Grant	250,000	7/7/2010	7/19/2010
James C. Lintzenich	Form 4	Option Grant	250,000	7/7/2010	7/19/2010
John J. Quinn	Form 4	Option Grant	250,000	7/7/2010	7/16/2010
Kenneth L. Shropshire	Form 4	Option Grant	250,000	7/7/2010	7/19/2010
Steven W. Saunders	Form 4	Option Grant	250,000	7/7/2010	7/19/2010
Colin Garner	Form 4	Option Grant	1,000,000	9/1/2010	4/4/2011
Colin Garner	Form 3	Appointment as Executive Officer	-	9/1/2010	4/4/2011
Kody Newland	Form 4	Option Grant	583,333	9/15/2010	Not Yet Filed

OTHER BUSINESS

NutraCea's management knows of no other business to be brought before the 2011 Annual Meeting of Shareholders. If, however, any other business should properly come before the annual meeting, the persons named in the accompanying proxy will vote proxies as in their discretion, as they may deem appropriate, unless they are directed by a proxy to do otherwise.

ANNUAL REPORT ON FORM 10-K

Shareholders may obtain a copy of the Annual Report on Form 10-K for the fiscal year ended December 31, 2010, without charge, by writing to Leo G. Gingras, NutraCea's Corporate Secretary, at NutraCea's principal executive offices at 6720 N. Scottsdale Road, Suite # 390, Scottsdale, Arizona 85253.

By Order of the Board of Directors
/s/ Leo G. Gingras
Leo G. Gingras
Secretary

Scottsdale, Arizona
May 9, 2011

CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION OF
NUTRACEA

The undersigned, _____ and _____ hereby certify that:

ONE: _____ is the duly elected President and _____ is the duly elected Secretary of NutraCea, a California corporation ("Corporation").

TWO: Article Three of the Articles of Incorporation of the Corporation shall be amended to read in full as follows:

ARTICLE THREE

"This Corporation is hereafter authorized to issue two (2) classes of shares of stock designated respectively "Common Stock" and "Preferred Stock." The total number of shares of Common Stock that this Corporation is authorized to issue is five hundred million (500,000,000) and the total number of shares of Preferred Stock that this Corporation is authorized to issue is twenty million (20,000,000).

The Preferred Stock may be divided into such number of series as the board of directors may determine. The board of directors is authorized to determine and alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The board of directors, within the limits and restrictions stated in any resolution or resolutions of the board of directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series."

THREE: The foregoing amendment of the Articles of Incorporation has been approved by the board of directors of the Company.

FOUR: The foregoing amendment of the Articles of Incorporation has been approved by the holders of the requisite number of shares of the corporation in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares entitled to vote with respect to the foregoing amendment was _____ shares of Common Stock. The number of shares voting in favor of the foregoing amendment equaled or exceeded the vote required, such required vote being a majority of the outstanding shares of Common Stock.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: June __, 2011

_____, President

_____, Secretary

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[CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION]

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NUTRACEA
2010 Equity Incentive Plan

1. **PURPOSE.** The purpose of this Plan is to provide incentives to attract, retain and motivate eligible persons whose present and potential contributions are important to the success of the Company, and any Parents and Subsidiaries that exist now or in the future, by offering them an opportunity to participate in the Company's future performance through the grant of Awards. Capitalized terms not defined elsewhere in the text are defined in Section 24.

2. **SHARES SUBJECT TO THE PLAN.**

2.1 **Number of Shares Available.** Subject to Sections 2.6 and 18 and any other applicable provisions hereof, the total number of Shares reserved and available for grant and issuance pursuant to this Plan is 25,000,000 Shares, and such number will be subject to increase pursuant to the Automatic Annual Increase as defined and provided in Section 2.4 below.

2.2 **Lapsed, Returned Awards.** Shares subject to Awards, and Shares issued upon exercise of Awards, will again be available for grant and issuance in connection with subsequent Awards under this Plan to the extent such Shares: (i) are subject to issuance upon exercise of an Option granted under this Plan but which cease to be subject to the Option for any reason other than exercise of the Option; (ii) are subject to Awards granted under this Plan that are forfeited or are repurchased by the Company at the original issue price; (iii) are surrendered pursuant to an Exchange Program; or (iv) are subject to Awards granted under this Plan that otherwise terminate without such Shares being issued. Shares that have been issued under the Plan under any Award will not be returned to the Plan and will not become available for future issuance under the Plan; provided, however, that if Shares issued pursuant to Awards of Restricted Stock or Stock Bonus Shares are repurchased by the Company at the original issue price or are forfeited to the Company, then such Shares shall become available for future grant under the Plan. Shares used to pay the exercise price of an Award or to satisfy the tax withholding obligations related to an Award will become available for future grant or sale under the Plan. To the extent an Award under the Plan is paid out in cash rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan.

2.3 **Minimum Share Reserve.** At all times the Company shall reserve and keep available a sufficient number of Shares as shall be required to satisfy the requirements of all outstanding Awards granted under this Plan and all other outstanding but unvested Awards granted under this Plan.

2.4 **Automatic Share Reserve Increase.** The number of Shares available for grant and issuance under the Plan shall automatically be increased as follows ("Automatic Annual Increase"): (i) on the first day of each January from 2011 through and including 2020, the number of Shares available for grant and issuance under this Plan shall be automatically increased by 5% of the number of shares of the Company's Common Stock issued and outstanding on the preceding December 31 (rounded to the nearest whole share); or (ii) a lesser number of Shares as determined by the Board before the start of a calendar year for which an increase applies.

2.5 **Limitations.** No more than 50,000,000 Shares shall be issued pursuant to the exercise of ISOs.

2.6 **Adjustment of Shares.** If the number of outstanding Shares is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company, without consideration, then (a) the number of Shares reserved for issuance and future grant under the

Plan set forth in Section 2.1, (b) the Exercise Prices of and number of Shares subject to outstanding Options, (c) the number of Shares subject to other outstanding Awards, (d) the maximum number of shares that may be issued as ISOs set forth in Section 2.5, (e) the number of Shares that are granted as Options to Outside Directors as set forth in Section 8 and (f) the maximum number of Shares that may be issued to an individual or to a new Employee in any one calendar year set forth in Section 3, shall be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and in compliance with applicable securities laws; provided that fractions of a Share will not be issued but will either be replaced by a cash payment equal to the Fair market Value of such fraction of a Share or will be rounded up (down in the case of ISOs) to the nearest whole Share, as determined by the Committee; and provided further that the Exercise Price of any Option may not be decreased to below the par value of the Shares.

3. ELIGIBILITY. ISOs may be granted only to Employees. All other Awards may be granted to Employees, Consultants, and Directors of the Company or any Parent or Subsidiary of the Company; provided such Consultants, and Directors render bona fide services not in connection with the offer and sale of securities in a capital-raising transaction. No Participant will be eligible to receive more than 5,000,000 Shares in any calendar year under this Plan pursuant to the grant of Awards, except that new Employees of the Company or of a Parent or Subsidiary of the Company (including new Employees who are also officers and directors of the Company or any Parent or Subsidiary of the Company) are eligible to receive up to a maximum of 10,000,000 Shares in the calendar year in which they commence their employment.

4. ADMINISTRATION.

4.1 Committee Composition; Authority. This Plan will be administered by the Committee or by the Board acting as the Committee. Subject to the general purposes, terms and conditions of this Plan, and to the direction of the Board, the Committee will have full power to implement and carry out this Plan except however, the Board shall establish the terms for the grant of Awards to Outside Directors. Without limiting the previous sentence, the Committee will have the authority to:

- (a) construe and interpret this Plan, any Award Agreement and any other agreement or document executed pursuant to this Plan;
- (b) prescribe, amend and rescind rules and regulations relating to this Plan or any Award;
- (c) select persons to receive Awards;
- (d) determine the form and terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Committee will determine;
- (e) determine the number of Shares or other consideration subject to Awards;
- (f) determine the Fair Market Value in good faith, if necessary;
- (g) determine whether Awards will be granted singly, in combination with, in tandem with, in replacement of, or as alternatives to, other Awards under this Plan or any other incentive or compensation plan of the Company or any Parent or Subsidiary of the Company;
- (h) grant waivers of Plan or Award conditions;
- (i) determine the vesting, exercisability and payment of Awards;
- (j) correct any defect, supply any omission or reconcile any inconsistency in this Plan, any Award or any Award Agreement;
- (k) determine whether an Award has been earned;
- (l) determine the terms and conditions of any, and to institute any, Exchange Program;
- (m) reduce or waive any criteria with respect to Performance Factors;
- (n) adjust Performance Factors to take into account changes in law and accounting or tax rules as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events or circumstances to avoid windfalls or hardships provided that such adjustments are consistent with the regulations promulgated under Section 162(m) of the Code with respect to persons whose compensation is subject to Section 162(m) of the Code; and
- (o) make all other determinations necessary or advisable for the administration of this Plan.

4.2 Committee Interpretation and Discretion. Any determination made by the Committee with respect to any Award shall be made in its sole discretion at the time of grant of the Award or, unless in contravention of any express term of the Plan or Award, at any later time, and such determination shall be final and binding on the Company and all persons having an interest in any Award under the Plan. Any dispute regarding the interpretation of the Plan or any Award Agreement shall be submitted by the Participant or Company to the Committee for review. The resolution of such a dispute by the Committee shall be final and binding on the Company and the Participant. The Committee may delegate to one or more executive officers the authority to review and resolve disputes with respect to Awards held by Participants who are not Insiders, and such resolution shall be final and binding on the Company and the Participant.

4.3 Section 162(m) of the Code and Section 16 of the Exchange Act. When the Committee determines, at the Committee's sole discretion, that it is necessary or desirable for an Award to qualify as "performance-based compensation" under Section 162(m) of the Code the Committee shall include at least two persons who are "outside directors" (as defined under Section 162(m) of the Code) and at least two (or a majority if more than two then serve on the Committee) such "outside directors" shall approve the grant of such Award and timely determine (as applicable) the Performance Period and any Performance Factors upon which vesting or settlement of any portion of such Award is to be subject. When required by Section 162(m) of the Code, prior to settlement of any such Award at least two (or a majority if more than two then serve on the Committee) such "outside directors" then serving on the Committee shall determine and certify in writing the extent to which such Performance Factors have been timely achieved and the extent to which the Shares subject to such Award have thereby been earned. Awards granted to Insiders must be approved by two or more "non-employee directors" (as defined in the regulations promulgated under Section 16 of the Exchange Act).

4.4 Delegation to an Officer. To the extent permissible by applicable law, the Board may delegate to one or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Awards and the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Awards granted to such Employees; provided, however, that the Board resolutions regarding such delegation shall specify the total number of shares of Common Stock that may be subject to the Awards granted by such Officer and that such Officer may not grant an Award to himself or herself. Notwithstanding anything to the contrary in this Section 4.4, the Board may not delegate to an Officer authority to determine the Fair Market Value pursuant to part (c) of the definition of Fair Market Value. The Board may delegate to one or more Officers the authority to renew and resolve disputes with respect to Awards held by Participants who are not an officer or director of the Company or any other person whose transactions in the Company's common stock are subject to Section 16 of the Exchange Act.

5. OPTIONS. The Committee may grant Options to Participants and will determine whether such Options will be Incentive Stock Options within the meaning of the Code ("ISOs") or Nonqualified Stock Options ("NQSOs"), the number of Shares subject to the Option, the Exercise Price of the Option, the period during which the Option may be exercised, and all other terms and conditions of the Option, subject to the following:

5.1 Option Grant. Each Option granted under this Plan will identify the Option as an ISO or an NQSO. An Option may be, but need not be, awarded upon satisfaction of such Performance Factors during any Performance Period as set out in advance in the Participant's individual Award Agreement. If the Option is being earned upon the satisfaction of Performance Factors, then the Committee will: (x) determine the nature, length and starting date of any Performance Period for each Option; and (y) select from among the Performance Factors to be used to measure the performance, if any. Performance Periods may overlap and Participants may participate simultaneously with respect to Options that are subject to different performance goals and other criteria.

5.2 Date of Grant. The date of grant of an Option will be the date on which the Committee makes the determination to grant such Option, or a specified future date. The Award Agreement and a copy of this Plan will be delivered to the Participant within a reasonable time after the granting of the Option.

5.3 Exercise Period. Options may be exercisable within the times or upon the conditions as set forth in the Award Agreement governing such Option; provided, however, that no Option will be exercisable after the expiration of ten (10) years from the date the Option is granted; and provided further that no ISO granted to a person who, at the time the ISO is granted, directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Parent or Subsidiary of the Company ("Ten Percent Shareholder") will be exercisable after the expiration of five (5) years from the date the ISO is granted. The Committee also may provide for Options to become exercisable at one time or from time to time, periodically or otherwise, in such number of Shares or percentage of Shares as the Committee determines.

5.4 Exercise Price. The Exercise Price of an Option will be determined by the Committee when the Option is granted; provided that: (i) the Exercise Price of an ISO will be not less than one hundred percent (100%) of the Fair Market Value of the Shares on the date of grant and (ii) the Exercise Price of any ISO granted to a Ten Percent Shareholder will not be less than one hundred ten percent (110%) of the Fair Market Value of the Shares on the date of grant. Payment for the Shares purchased must be made in accordance with Section 8 of the Plan and the Award Agreement.

5.5 Method of Exercise. Any Option granted hereunder will be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Committee and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share. An Option will be deemed exercised when the Company receives: (i) notice of exercise (in such form as the Committee may specify from time to time) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised (together with applicable withholding taxes). Full payment may consist of any consideration and method of payment authorized by the Committee and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 2.6 of the Plan. Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

5.6 Change of Control Transactions. Except as otherwise provided in an Award Agreement for a particular Option, in the event of a Change of Control Transaction, the vesting of all Options granted to employees pursuant to this Section 5 shall accelerate and such Options will become exercisable in full immediately prior to the consummation of the Change of Control Transaction at such time and on such conditions as the Committee determines, and, unless otherwise determined by the Board, if such Options are not exercised on or prior to the consummation of the Change of Control Transaction, they shall terminate immediately following the consummation of a Change of Control Transaction.

5.7 Termination. The exercise of an Option will be subject to the following (except as may be otherwise provided in an Award Agreement):

(a) If the Participant is Terminated for any reason except for Cause or the Participant's death or Disability, then the Participant may exercise such Participant's Options only to the extent that such Options would have been exercisable by the Participant on the Termination Date no later than three (3) months after the Termination Date (or such shorter time period not less than thirty (30) days or longer time period not exceeding five (5) years as may be determined by the Committee, with any exercise beyond three (3) months after the Termination Date deemed to be an NQSO), but in any event no later than the expiration date of the Options.

(b) If the Participant is Terminated because of the Participant's death (or the Participant dies within three (3) months after a Termination other than for Cause or because of the Participant's Disability), then the Participant's Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the Termination Date and must be exercised by the Participant's legal representative, or authorized assignee, no later than twelve (12) months after the Termination Date (or such shorter time period not less than six (6) months or longer time period not exceeding five (5) years as may be determined by the Committee), but in any event no later than the expiration date of the Options.

(c) If the Participant is Terminated because of the Participant's Disability, then the Participant's Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the Termination Date and must be exercised by the Participant (or the Participant's legal representative or authorized assignee) no later than twelve (12) months after the Termination Date (with any exercise beyond (a) three (3) months after the Termination Date when the Termination is for a Disability that is not a "permanent and total disability" as defined in Section 22(e)(3) of the Code, or (b) twelve (12) months after the Termination Date when the Termination is for a Disability that is a "permanent and total disability" as defined in Section 22(e)(3) of the Code, deemed to be exercise of an NQSO), but in any event no later than the expiration date of the Options.

(d) If the Participant is terminated for Cause, then Participant's Options shall expire on such Participant's Termination Date, or at such later time and on such conditions as are determined by the Committee, but in any no event later than the expiration date of the Options.

5.8 Limitations on Exercise. The Committee may specify a minimum number of Shares that may be purchased on any exercise of an Option, provided that such minimum number will not prevent any Participant from exercising the Option for the full number of Shares for which it is then exercisable.

5.9 Limitations on ISOs. With respect to Awards granted as ISOs, to the extent that the aggregate Fair Market Value of the Shares with respect to which such ISOs are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds one hundred thousand dollars (\$100,000), such Options will be treated as NQSOs. For purposes of this Section 5.8, ISOs will be taken into account in the order in which they were granted. The Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted. In the event that the Code or the regulations promulgated thereunder are

amended after the Effective Date to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISOs, such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

5.10 Modification, Extension or Renewal. The Committee may modify, extend or renew outstanding Options and authorize the grant of new Options in substitution therefor, provided that any such action may not, without the written consent of a Participant, impair any of such Participant's rights under any Option previously granted. Any outstanding ISO that is modified, extended, renewed or otherwise altered will be treated in accordance with Section 424(h) of the Code. Subject to Section 15 of this Plan, by written notice to affected Participants, the Committee may reduce the Exercise Price of outstanding Options without the consent of such Participants; provided, however, that the Exercise Price may not be reduced below the Fair Market Value on the date the action is taken to reduce the Exercise Price.

5.11 No Disqualification. Notwithstanding any other provision in this Plan, no term of this Plan relating to ISOs will be interpreted, amended or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or, without the consent of the Participant affected, to disqualify any ISO under Section 422 of the Code.

6. RESTRICTED STOCK AWARDS.

6.1 Awards of Restricted Stock. A Restricted Stock Award is an offer by the Company to sell to a Participant Shares that are subject to restrictions (“Restricted Stock”). The Committee will determine to whom an offer will be made, the number of Shares the Participant may purchase, the Purchase Price, the restrictions under which the Shares will be subject and all other terms and conditions of the Restricted Stock Award, subject to the Plan.

6.2 Restricted Stock Purchase Agreement. All purchases under a Restricted Stock Award will be evidenced by an Award Agreement. Except as may otherwise be provided in an Award Agreement, a Participant accepts a Restricted Stock Award by signing and delivering to the Company an Award Agreement with full payment of the Purchase Price, within thirty (30) days from the date the Award Agreement was delivered to the Participant. If the Participant does not accept such Award within thirty (30) days, then the offer of such Restricted Stock Award will terminate, unless the Committee determines otherwise.

6.3 Purchase Price. The Purchase Price for a Restricted Stock Award will be determined by the Committee and may be less than Fair Market Value on the date the Restricted Stock Award is granted. Payment of the Purchase Price must be made in accordance with Section 8 of the Plan, and the Award Agreement.

6.4 Terms of Restricted Stock Awards. Restricted Stock Awards will be subject to such restrictions as the Committee may impose or are required by law. These restrictions may be based on completion of a specified number of years of service with the Company or upon completion of the performance goals based upon the Performance Factors, if any, during any Performance Period as set out in advance in the Participant’s Award Agreement. Prior to the grant of a Restricted Stock Award, the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Restricted Stock Award; (b) select from among the Performance Factors to be used to measure performance goals, if any; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Restricted Stock Awards that are subject to different Performance Periods and having different performance goals and other criteria.

6.5 Termination of Participant. Except as may be set forth in the Participant’s Award Agreement, vesting ceases on such Participant’s Termination Date (unless determined otherwise by the Committee).

7. STOCK BONUS AWARDS.

7.1 Awards of Stock Bonuses. A Stock Bonus Award is an award to an eligible person of Shares (which may consist of Restricted Stock) for services to be rendered or for past services already rendered to the Company or any Parent or Subsidiary. All Stock Bonus Awards shall be made pursuant to an Award Agreement. No payment from the Participant will be required for Shares awarded pursuant to a Stock Bonus Award.

7.2 Terms of Stock Bonus Awards. The Committee will determine the number of Shares to be awarded to the Participant under a Stock Bonus Award and any restrictions thereon. These restrictions may be based upon completion of a specified number of years of service with the Company or upon satisfaction of performance goals based on Performance Factors during any Performance Period as set out in advance in the Participant’s Stock Bonus Agreement. If the Stock Bonus Award is to be earned upon the satisfaction of performance goals, the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Stock Bonus Award; (b) select

from among the Performance Factors to be used to measure performance goals; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Stock Bonus Awards that are subject to different Performance Periods and different performance goals and other criteria.

7.3 Form of Payment to Participant. Payment may be made in the form of cash, whole Shares, or a combination thereof, based on the Fair Market Value of the Shares earned under a Stock Bonus Award on the date of payment, as determined in the sole discretion of the Committee.

7.4 Termination of Participation. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such Participant's Termination Date (unless determined otherwise by the Committee).

8. **PAYMENT FOR SHARE PURCHASES.** Payment from a Participant for Shares purchased pursuant to this Plan may be made in cash or by check or, where expressly approved for the Participant by the Committee and where permitted by law (and to the extent not otherwise set forth in the applicable Award Agreement):

(a) by cancellation of indebtedness of the Company to the Participant;

(b) by surrender of shares of the Company held by the Participant that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Award will be exercised or settled;

(c) by waiver of compensation due or accrued to the Participant for services rendered or to be rendered to the Company or a Parent or Subsidiary of the Company;

(d) by consideration received by the Company pursuant to a broker-assisted and/or same day sale (or other) cashless exercise program implemented by the Company in connection with the Plan;

(e) by any combination of the foregoing; or

(f) by any other method of payment as is permitted by applicable law.

9. **AUTOMATIC GRANTS TO OUTSIDE DIRECTORS.**

9.1 Eligibility. Outside Directors are eligible for Options granted pursuant to this Section 9. Notwithstanding the foregoing, this Section 9 does not limit the ability of the Committee to grant discretionary Awards to Outside Directors.

9.2 Annual Grant. On the first business day of each calendar year, each Outside Director will be granted an Option to purchase two hundred fifty thousand (250,000) Shares, or such lesser number of Shares as determined by the Board. Any Outside Director that is initially appointed or elected to the Board following the first business day of a calendar year shall receive, on the date of such appointment or election, an Option to purchase a pro-rata number of the 250,000 Shares based on the number of months remaining in the calendar year from the date of such appointment or election (an "Appointment Grant"). Each Option granted pursuant to this Section 9.2 shall be called an "Annual Grant".

9.3 Vesting and Exercisability.

(a) Vesting. Annual Grants shall vest and become exercisable as to 1/12 of the total Shares subject to the Annual Grant on each monthly anniversary of the date of grant, such that Annual Grants are fully vested and exercisable on first anniversary of the date of grant, so long as the Outside Director continuously remains a Director, Consultant or Employee of the Company. Notwithstanding the above, Appointment Grants shall vest monthly in equal amounts over the remaining months in the calendar year they were granted so as to be fully vested by the end of the calendar year.

(b) Change of Control Transactions. In the event of a Change of Control Transaction, the vesting of all Options granted to Outside Directors pursuant to this Section 9 shall accelerate and such Options will become exercisable in full immediately prior to the consummation of the Change of Control Transaction at such time and on such conditions as the Committee determines, and if such Options are not exercised on or prior to the consummation of the Change of Control Transaction, they shall terminate immediately following the consummation of the Change of Control Transaction.

9.4 Form of Option Grant. Each Option granted under this Section 9 shall be a NQSO and shall be evidenced by a Outside Director Stock Option Grant Agreement in such form as the Committee shall from time to time approve and which shall comply with and be subject to the terms and conditions of this Plan.

9.5 Exercise Price. The Exercise Price per Share of each Option granted under this Section 9 shall be the Fair Market Value of the Share on the date the Option is granted.

9.6 Termination of Option. Except as provided in Section 9.3(b) or this Section 9.6, each Option granted under this Section 9 shall expire ten (10) years after its date of grant. The date on which the Outside Director ceases to be a member of the Board, a Consultant or Employee of the Company shall be referred to as the "Outside Director Termination Date" for purposes of this Section 9.6. An Option may be exercised after the Outside Director Termination Date only as set forth below:

(a) Termination Generally. If the Outside Director ceases to be a member of the Board, Consultant or Employee of the Company for any reason except death or Disability, each Annual Grant, to the extent then vested pursuant to Section 9.3 above, then held by such Outside Director may be exercised by the Outside Director (or his or her legal representative) within three (3) months after the Outside Director Termination Date, but in no event later than the expiration date for the Annual Grant.

(b) Death. If the Outside Director ceases to be a member of the Board, Consultant or Employee of the Company because of his or her death, then each Annual Grant, to the extent then vested pursuant to Section 9.3 above, then held by such Outside Director, may be exercised by the Outside Director or his or her legal representative within twelve (12) months after the Outside Director Termination Date, but in no event later than the expiration date for the Annual Grant.

(c) Disability. If the Outside Director ceases to be a member of the Board, Consultant or Employee of the Company because of his or her Disability, then each Annual Grant, to the extent then vested pursuant to Section 9.3 above, then held by such Outside Director, may be exercised by the Outside Director or his or her legal representative within twelve (12) months after the Outside Director Termination Date, but in no event later than the expiration date for the Annual Grant.

10. WITHHOLDING TAXES.

10.1 Withholding Generally. Whenever Shares are to be issued in satisfaction of Awards granted under this Plan, the Company may require the Participant to remit to the Company an amount sufficient to satisfy applicable federal, state, local and international withholding tax requirements prior to the delivery of Shares pursuant to exercise or settlement of any Award. Whenever payments in satisfaction of Awards granted under this Plan are to be made in cash, such payment will be net of an amount sufficient to satisfy applicable federal, state, local and international withholding tax requirements.

10.2 Stock Withholding. The Committee, in its sole discretion and pursuant to such procedures as it may specify from time to time, may require or permit a Participant to satisfy such tax withholding obligation, in whole or in part by (without limitation) (i) paying cash, (ii) electing to have the Company withhold otherwise deliverable cash or Shares having a Fair Market Value equal to the minimum statutory amount required to be withheld, or (iii) delivering to the Company already-owned Shares having a Fair Market Value equal to the minimum statutory amount required to be withheld. The Fair Market Value of the Shares to be withheld or delivered will be determined as of the date that the taxes are required to be withheld.

11. TRANSFERABILITY. Unless determined otherwise by the Committee, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution. If the Committee makes an Award transferable, such Award will contain such additional terms and conditions as the Committee deems appropriate. All Awards shall be exercisable: (i) during the Participant's lifetime only by (A) the Participant, or (B) the Participant's guardian or legal representative; and (ii) after the Participant's death, by the legal representative of the Participant's heirs or legatees.

12. PRIVILEGES OF STOCK OWNERSHIP; RESTRICTIONS ON SHARES.

12.1 Voting and Dividends. No Participant will have any of the rights of a shareholder with respect to any Shares until the Shares are issued to the Participant. After Shares are issued to the Participant, the Participant will be a shareholder and have all the rights of a shareholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares; provided, that if such Shares are Restricted Stock, then any new, additional or different securities the Participant may become entitled to receive with respect to such Shares by virtue of a stock dividend, stock split or any other change in the corporate or capital structure of the Company will be subject to the same restrictions as the Restricted Stock; provided, further, that the Participant will have no right to retain such stock dividends or stock distributions with respect to Shares that are repurchased at the Participant's Purchase Price or Exercise Price, as the case may be, pursuant to Section 12.2.

12.2 Restrictions on Shares. At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) a right to repurchase (a "Right of Repurchase") a portion of any or all Unvested Shares held by a Participant following such Participant's Termination at any time within ninety (90) days after the later of the Participant's Termination Date and the date the Participant purchases Shares under this Plan, for cash and/or cancellation of purchase money indebtedness, at the Participant's Purchase Price or Exercise Price, as the case may be.

13. CERTIFICATES. All certificates for Shares or other securities delivered under this Plan will be subject to such stock transfer orders, legends and other restrictions as the Committee may deem necessary or advisable, including restrictions under any applicable federal, state or foreign securities law, or any rules, regulations and other requirements of the SEC or any stock exchange or automated quotation system upon which the Shares may be listed or quoted.

14. ESCROW; PLEDGE OF SHARES. To enforce any restrictions on a Participant's Shares, the Committee may require the Participant to deposit all certificates representing Shares, together with stock powers or other instruments of transfer approved by the Committee, appropriately endorsed in blank, with the Company or an agent designated by the Company to hold in escrow until such restrictions have lapsed or terminated, and the Committee may cause a legend or legends referencing such restrictions to be placed on the certificates. Any Participant who is permitted to execute a promissory note as partial or full consideration for the purchase of Shares under this Plan will be required to pledge and deposit with the Company all or part of the Shares so purchased as collateral to secure the payment of the Participant's obligation to the Company under the promissory note; provided, however, that the Committee may require or accept other or additional forms of collateral to secure the payment of such obligation and, in any event, the Company will have full recourse against the Participant under the promissory note notwithstanding any pledge of the Participant's Shares or other collateral. In connection with any pledge of the Shares, the Participant will be required to execute and deliver a written pledge agreement in such form as the Committee will from time to time approve. The Shares purchased with the promissory note may be released from the pledge on a pro rata basis as the promissory note is paid.

15. **REPRICING; EXCHANGE AND BUYOUT OF AWARDS.** The Committee may reprice Options without prior stockholder approval. The Committee may, at any time or from time to time authorize the Company, in the case of an Option exchange, and with the consent of the respective Participants (unless not required pursuant to Section 5.9 of the Plan), to pay cash or issue new Awards in exchange for the surrender and cancellation of any, or all, outstanding Awards. The Committee may reduce the Exercise Price of outstanding Options without the consent of affected Participants by a written notice to them; provided, however, that the Exercise Price may not be reduced below the minimum Exercise Price necessary to avoid treatment as a “deferral of compensation” under Section 409A of the Code.

16. **SECURITIES LAW AND OTHER REGULATORY COMPLIANCE.** An Award will not be effective unless such Award is in compliance with all applicable federal and state securities laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the Award and also on the date of exercise or other issuance. Notwithstanding any other provision in this Plan, the Company will have no obligation to issue or deliver certificates for Shares under this Plan prior to: (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and/or (b) completion of any registration or other qualification of such Shares under any state or federal law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company will be under no obligation to register the Shares with the SEC or to effect compliance with the registration, qualification or listing requirements of any state securities laws, stock exchange or automated quotation system, and the Company will have no liability for any inability or failure to do so.

17. **NO OBLIGATION TO EMPLOY.** Nothing in this Plan or any Award granted under this Plan will confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Parent or Subsidiary of the Company or limit in any way the right of the Company or any Parent or Subsidiary of the Company to terminate Participant’s employment or other relationship at any time.

18. **CORPORATE TRANSACTIONS.**

18.1 **Assumption or Replacement of Awards by Successor.** In the event of a Corporate Transaction any or all outstanding Awards may be assumed or replaced by the successor corporation, which assumption or replacement shall be binding on all Participants. In the alternative, the successor corporation may substitute equivalent Awards or provide substantially similar consideration to Participants as was provided to stockholders (after taking into account the existing provisions of the Awards). The successor corporation may also issue, in place of outstanding Shares of the Company held by the Participant, substantially similar shares or other property subject to repurchase restrictions no less favorable to the Participant. In the event such successor or acquiring corporation (if any) refuses to assume, convert, replace or substitute Awards, as provided above, pursuant to a Corporate Transaction, then notwithstanding any other provision in this Plan to the contrary, such Awards will expire on such transaction at such time and on such conditions as the Board will determine; the Board (or, the Committee, if so designated by the Board) may, in its sole discretion, accelerate the vesting of such Awards in connection with a Corporate Transaction. In addition, in the event such successor or acquiring corporation (if any) refuses to assume, convert, replace or substitute Awards, as provided above, pursuant to a Corporate Transaction, the Committee will notify the Participant in writing or electronically that such Award will be exercisable for a period of time determined by the Committee in its sole discretion, and such Award will terminate upon the expiration of such period. Awards need not be treated similarly in a Corporate Transaction.

Notwithstanding anything to the contrary in this Section 18.1, the Committee, in its sole discretion, may grant Awards that provide for acceleration upon a Corporate Transaction or in other events in the specific Award Agreements.

18.2 **Assumption of Awards by the Company.** The Company, from time to time, also may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or

otherwise, by either; (a) granting an Award under this Plan in substitution of such other company's award; or (b) assuming such award as if it had been granted under this Plan if the terms of such assumed award could be applied to an Award granted under this Plan. Such substitution or assumption will be permissible if the holder of the substituted or assumed award would have been eligible to be granted an Award under this Plan if the other company had applied the rules of this Plan to such grant. In the event the Company assumes an award granted by another company, the terms and conditions of such award will remain unchanged (except that the Purchase Price or the Exercise Price, as the case may be, and the number and nature of Shares issuable upon exercise or settlement of any such Award will be adjusted appropriately pursuant to Section 424(a) of the Code).

18.3 Outside Directors' Awards. Notwithstanding any provision to the contrary herein, in the event of a Change of Control Transaction, the vesting of all Awards granted to Outside Directors shall accelerate and such Awards shall become exercisable (as applicable) in full prior to the consummation of such event at such times and on such conditions as the Committee determines.

19. ADOPTION AND SHAREHOLDER APPROVAL. This Plan shall be submitted for the approval of the Company's shareholders, consistent with applicable laws, within twelve (12) months before or after the date this Plan is adopted by the Board.

20. TERM OF PLAN/GOVERNING LAW. Unless earlier terminated as provided herein, this Plan will become effective on the Effective Date and will terminate ten (10) years from the date this Plan is adopted by the Board. This Plan and all Awards granted hereunder shall be governed by, and construed in accordance with, the laws of the State of California.

21. AMENDMENT OR TERMINATION OF PLAN. The Board may at any time terminate or amend this Plan in any respect, including, without limitation, amendment of any form of Award Agreement or instrument to be executed pursuant to this Plan; provided, however, that the Board will not, without the approval of the shareholders of the Company, amend this Plan in any manner that requires such shareholder approval; provided further, that a Participant's Award shall be governed by the version of this Plan then in effect at the time such Award was granted.

22. NONEXCLUSIVITY OF THE PLAN. Neither the adoption of this Plan by the Board, the submission of this Plan to the shareholders of the Company for approval, nor any provision of this Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of stock awards and bonuses otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

23. INSIDER TRADING POLICY. Each Participant who receives an Award shall comply with any policy adopted by the Company from time to time covering transactions in the Company's securities by Employees, officers and/or directors of the Company.

24. DEFINITIONS. As used in this Plan, and except as elsewhere defined herein, the following terms will have the following meanings:

"Award" means any award under the Plan, including any Option, Restricted Stock or Stock Bonus.

"Award Agreement" means, with respect to each Award, the written or electronic agreement between the Company and the Participant setting forth the terms and conditions of the Award, which shall be in substantially a form (which need not be the same for each Participant) that the Committee has from time to time approved, and will comply with and be subject to the terms and conditions of this Plan.

"Board" means the Board of Directors of the Company.

"Cause" means (a) the commission of an act of theft, embezzlement, fraud, dishonesty, (b) a breach of fiduciary duty to the Company or a Parent or Subsidiary, (c) a failure to materially perform the customary duties of Employee's employment, (d) any unauthorized use or disclosure by the Participant of confidential information or trade secrets of the Company, or (e) any intentional misconduct by a Participant that adversely affects the business or affairs of the Company in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Company may consider as grounds for the dismissal or discharge of a Participant.

“Change of Control Transaction” means the occurrence of any of the following events: (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then-outstanding voting securities; (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company’s assets; or (iii) the consummation of a merger or consolidation of the Company or a subsidiary with another corporation or any other entity, other than a merger or consolidation which results in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

“Code” means the United States Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Committee” means the Compensation Committee of the Board or those persons to whom administration of the Plan, or part of the Plan, has been delegated as permitted by law.

“Company” means NutraCea, a California corporation, or any successor corporation.

“Consultant” means any person, including an advisor or independent contractor, engaged by the Company or a Parent or Subsidiary to render services to such entity.

“Corporate Transaction” means (a) a merger or consolidation in which the Company is not the surviving corporation, (b) a dissolution or liquidation of the Company, (c) the sale of substantially all of the assets of the Company, (d) a merger in which the Company is the surviving corporation but after which the stockholders of the Company immediately prior to such merger (other than any stockholder that merges, or which owns or controls another corporation that merges, with the Company in such merger) cease to own their shares or other equity interest in the Company; or (e) any other transaction which qualifies as a “corporate transaction” under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of the Company).

“Director” means a member of the Board.

“Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code, provided, however, that except with respect to Awards granted as ISOs, the Committee in its discretion may determine whether a total and permanent disability exists in accordance with non-discriminatory and uniform standards adopted by the Committee from time to time, whether temporary or permanent, partial or total, as determined by the Committee.

“Effective Date” means the date of the Plan’s adoption by the Board.

“Employee” means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director’s fee by the Company will be sufficient to constitute “employment” by the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exercise Price” means the price at which a holder of an Option may purchase the Shares issuable upon exercise of an Option.

“Exchange Program” means a program pursuant to which outstanding Awards are surrendered, cancelled or exchanged for cash, the same type of Award or a different Award (or combination thereof).

“Fair Market Value” means, as of any date, the value of a share of the Company’s Common Stock determined as follows:

(a) if such Common Stock is publicly traded and is then listed on a national securities exchange or quoted on the OTC Bulletin Board, its closing price on the date of determination on the OTC Bulletin Board or the principal national securities exchange on which the Common Stock is listed or admitted to trading, as applicable, as reported in The Wall Street Journal or such other source as the Board or the Committee deems reliable;

(b) if such Common Stock is publicly traded but is neither listed nor admitted to trading on a national securities exchange or on the OTC Bulletin Board, the average of the closing bid and asked prices on the date of determination as reported in The Wall Street Journal or such other source as the Board or the Committee deems reliable; or

(c) if none of the foregoing is applicable, by the Board or the Committee in good faith and by taking into account such factors as may be required by applicable law.

“Insider” means an officer or director of the Company or any other person whose transactions in the Company’s Common Stock are (or would be if the Company’s Shares are not then publicly traded) subject to Section 16 of the Exchange Act.

“Officer” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

“Option” means an award of an option to purchase Shares pursuant to Section 5 or Section 9.

“Outside Director” means a Director who is not an Employee of the Company or any Parent or Subsidiary.

“Parent” means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of such corporations other than the Company owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

“Participant” means an Employee, Consultant or Director (including Outside Directors) who receives an Award under this Plan.

“Performance Factors” means the factors selected by the Committee, which may include, but are not limited to the, the following measures (whether or not in comparison to other peer companies) to determine whether the performance goals established by the Committee and applicable to Awards have been satisfied:

- Net revenue and/or net revenue growth;
- Earnings per share and/or earnings per share growth;
- Earnings before income taxes and amortization and/or earnings before income taxes and amortization growth;
- Operating income and/or operating income growth;
- Net income and/or net income growth;
- Total stockholder return and/or total stockholder return growth;
- Return on equity;
- Operating cash flow return on income;
- Adjusted operating cash flow return on income;
- Economic value added;
- Individual business objectives; and
- Company specific operational metrics.

“Performance Period” means the period of service determined by the Committee, not to exceed five (5) years, during which years of service or performance is to be measured for the Award.

“Plan” means this NutraCea 2010 Equity Incentive Plan.

“Purchase Price” means the price to be paid for Shares acquired under the Plan, other than Shares acquired upon exercise of an Option.

“Restricted Stock Award” means an award of Shares pursuant to Section 6 of the Plan, or issued pursuant to the early exercise of an Option.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Shares” means shares of the Company’s Common Stock as adjusted pursuant to Sections 2 and 18, and any successor security.

“Stock Bonus” means an Award granted pursuant to Section 7 of the Plan.

“Subsidiary” means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

“Termination” or “Terminated” means, for purposes of this Plan with respect to a Participant, that the Participant has for any reason ceased to provide services as an employee, officer, director, consultant, independent contractor or advisor to the Company or a Parent or Subsidiary of the Company. An employee will not be deemed to have ceased to provide services in the case of (i) sick leave, (ii) military leave, or (iii) any other leave of absence approved by the Committee; provided, that such leave is for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute or unless provided otherwise pursuant to formal policy adopted from time to time by the Company and issued and promulgated to employees in writing. In the case of any employee on an approved leave of absence, the Committee may make such provisions respecting suspension of vesting of the Award while on leave from the employ of the Company or a Parent or Subsidiary of the Company as it may deem appropriate, except that in no event may an Award be exercised after the expiration of the term set forth in the applicable Award Agreement. The Committee will have sole discretion to determine whether a Participant has ceased to provide services and the effective date on which the Participant ceased to provide services (the “Termination Date”).

“Unvested Shares” means Shares that have not yet vested or are subject to a right of repurchase in favor of the Company (or any successor thereto).

ANNUAL MEETING OF SHAREHOLDERS OF

NUTRACEA

June 14, 2011

NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIAL:

The annual report and proxy statement
are available at <http://www.nutracea.com/InvestorRelations>

PROXY VOTING INSTRUCTIONS

Company Account
Number: Number:

INTERNET — Access “www.voteproxy.com” and follow the on-screen instructions. Have your proxy card available when you access the web page, and use the Company Number and Account Number shown on your proxy card.

TELEPHONE — Call toll-free 1-800-PROXIES (1-800-776-9437) in the United States or 1-718-921-8500 from foreign countries from any touch-tone telephone and follow the instructions. Have your proxy card available when you call and use the Company Number and Account Number shown on your proxy card.

Vote online/phone until 11:59 PM EST the day before the meeting.

MAIL — Sign, date and mail your proxy card in the envelope provided as soon as possible.

IN PERSON — You may not vote your shares in person by attending the Annual Meeting.

Please detach along perforated line and mail in the envelope provided.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" THE ELECTION OF ALL NOMINEES AND "FOR" EACH OF THE OTHER PROPOSALS LISTED BELOW. PLEASE SIGN, DATE AND RETURN PROMPTLY IN THE ENCLOSED ENVELOPE. PLEASE MARK YOUR VOTE IN BLUE OR BLACK INK AS SHOWN HERE T

NOMINEES:

1.

Election of Directors:

£	W. John Short
£	Richard H. Koppes
£	James C. Lintzenich
£	Edward L. McMillan
£	John J. Quinn
£	Steven W. Saunders
£	FOR ALL NOMINEES
£	WITHHOLD AUTHORITY FOR ALL NOMINEES
£	FOR ALL EXCEPT (See instructions below)

INSTRUCTIONS: To withhold authority to vote for any individual nominee(s), mark "FOR ALL EXCEPT" and fill in the circle next to each nominee you wish to withhold, as shown here:

2. Approve amendment to NutraCea's articles of incorporation to increase the authorized number of shares of common stock.
3.

Approve NutraCea's 2010 Equity Incentive Plan.
4. Ratify appointment of BDO USA, LLP as NutraCea's independent registered public accounting firm for the fiscal year 2011.
5. In their discretion on any other matter that may properly come before the meeting or any adjournment thereof.

This proxy, when properly executed, will be voted in the manner directed by the undersigned stockholder. If no direction is made, this proxy will be voted "FOR" the proposals described herein.

WHETHER OR NOT YOU PLAN TO ATTEND THIS MEETING, PLEASE VOTE YOUR SHARES PROMPTLY BY MARKING, SIGNING, DATING AND RETURNING THE PROXY CARD IN THE ENCLOSED POSTAGE PAID RETURN ENVELOPE.

TO INCLUDE ANY COMMENTS, USE THE COMMENTS BOX ON THE REVERSE SIDE OF THIS CARD.

To change the address on your account, please check the box at right and indicate your new address in the address space above. Please note that changes to the registered name(s) on the account may not be submitted via this method.

Please check this box if you plan to attend the Annual Meeting.

Signature of Shareholder Date: Signature of Shareholder Date:

Note: Please sign exactly as your name or names appear on this Proxy. When shares are held jointly, each holder should sign. When signing as executor, administrator, attorney, trustee or guardian, please give full title as such. If the signer is a corporation, please sign full corporate name by duly authorized officer, giving full title as such. If signer is a partnership, please sign in partnership name by authorized person.

[END PAGE 1]

ADMISSION CARD

ANNUAL MEETING OF SHAREHOLDERS

June 14, 2011
9:00 A.M. (Local Time)
Scottsdale Plaza Resort
7200 North Scottsdale Road
Scottsdale, AZ 85253

Presentation of this card is required

for admission to the Annual Meeting

PLEASE PRESENT THIS CARD TO THE COMPANY'S REPRESENTATIVE
AT THE ENTRANCE TO THE ANNUAL MEETING.

NUTRACEA

Name:

Address:

Non-Transferable

NUTRACEA

6720 N. Scottsdale Road, Suite # 390
Scottsdale, Arizona 85253

THIS PROXY IS SOLICITED ON BEHALF OF THE COMPANY'S BOARD OF DIRECTORS

The undersigned holder of Common Stock of NutraCea, a California corporation (the "Company"), hereby appoints W. John Short and Leo G. Gingras, and each of them, as proxies for the undersigned, each with full power of substitution, for and in the name of the undersigned to act for the undersigned and to vote, as designated on the reverse side of this proxy card, all of the shares of stock of the Company that the undersigned may be entitled to vote at the 2011 Annual Meeting of Shareholders of the Company, to be held at Scottsdale Plaza Resort, 7200 North Scottsdale Road,, Scottsdale, AZ 85253 , on Tuesday, June 14, 2011, from 9:00 A.M. to 11:00 A.M. local time, and at any adjournments or postponements thereof, and in their discretion upon such other business as may properly come before the Annual Meeting or any adjournments or postponements thereof.

(Continued and to be signed on the reverse side)

COMMENTS:
