

# U.S. SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

## FORM 10-Q

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

For the quarterly period ended September 30, 2012

**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. 0-23590

### NEXXUS LIGHTING, INC.

(Exact Name of Registrant as Specified in Its Charter)

DELAWARE

(State or other Jurisdiction of  
Incorporation or Organization)

59-3046866

(I.R.S. Employer  
Identification No.)

124 FLOYD SMITH DRIVE, SUITE 300, CHARLOTTE, NORTH CAROLINA 28262

(Address of Principal Executive Offices) (Zip Code)

(704) 405-0416

(Registrant's Telephone Number, Including Area Code)

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

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

Indicate by check mark 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

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

Number of shares of Common Stock, \$.001 par value, outstanding on November 8, 2012: 35,005,507

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**Consolidated Balance Sheets**

|   | (Unaudited)<br>September 30,<br>2012 | December 31,<br>2011 |
|---|--------------------------------------|----------------------|
| <b>ASSETS</b>   |                                      |                      |
| Current Assets:   |                                      |                      |
| Cash and cash equivalents   | \$ 4,297,721                         | \$ 3,014,656         |
| Trade accounts receivable, less allowance for doubtful accounts of \$57,931 and \$52,912  | 594,640                              | 564,474              |
| Inventories, less reserve of \$1,524,419 and \$895,415  | 1,336,677                            | 2,977,047            |
| Prepaid expenses  | 92,890                               | 65,749               |
| Other assets  | <u>8,772</u>                         | <u>26,359</u>        |
| Total current assets  | 6,330,700                            | 6,648,285            |
| Property and equipment  | 509,247                              | 3,279,121            |
| Accumulated depreciation and amortization   | <u>(364,131)</u>                     | <u>(2,536,144)</u>   |
| Net property and equipment  | 145,116                              | 742,977              |
| Goodwill  | —                                    | 1,988,920            |
| Other intangible assets, less accumulated amortization of \$800,080 and \$879,490   | 1,418,841                            | 2,543,969            |
| Other assets, net   | <u>9,295</u>                         | <u>23,857</u>        |
|   | <u>\$ 7,903,952</u>                  | <u>\$ 11,948,008</u> |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>   |                                      |                      |
| Current Liabilities:  |                                      |                      |
| Accounts payable  | \$ 772,642                           | \$ 825,100           |
| Accrued liabilities   | 135,707                              | 245,816              |
| Related party payable   | 3,868                                | 18,151               |
| Accrued compensation and benefits   | 91,337                               | 206,803              |
| Current portion of deferred rent  | 1,330                                | 25,882               |
| Other current liabilities   | <u>280</u>                           | <u>74</u>            |
| Total current liabilities   | 1,005,164                            | 1,321,826            |
| Convertible promissory notes to related parties, net of debt discount   | <u>—</u>                             | <u>2,314,854</u>     |
| Total liabilities   | 1,005,164                            | 3,636,680            |
| Commitments and contingencies   |                                      |                      |
| Stockholders' Equity:   |                                      |                      |
| Series B convertible preferred stock, \$.001 par value, aggregate liquidation preference of \$6,000,000;<br>1,000,000 shares authorized, 600,000 and 0 issued and outstanding | \$ 5,195,225                         | \$ —                 |
| Common stock, \$.001 par value, 40,000,000 and 30,000,000 shares authorized, 17,452,738 and<br>16,452,738 issued and outstanding  | 17,453                               | 16,453               |
| Additional paid-in capital  | 50,638,575                           | 50,007,362           |
| Accumulated deficit   | <u>(48,952,465)</u>                  | <u>(41,712,487)</u>  |
| Total stockholders' equity  | <u>6,898,788</u>                     | <u>8,311,328</u>     |
|   | <u>\$ 7,903,952</u>                  | <u>\$ 11,948,008</u> |

See accompanying notes to unaudited consolidated financial statements.

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**Consolidated Statements of Operations (Unaudited)**

|   | Three Months Ended    |                       | Nine Months Ended      |                       |
|---|-----------------------|-----------------------|------------------------|-----------------------|
|   | September 30,         |                       | September 30,          |                       |
|   | 2012                  | 2011                  | 2012                   | 2011                  |
| Revenue   | \$ 1,250,515          | \$ 2,113,003          | \$ 3,452,067           | \$ 7,732,313          |
| Cost of sales   | <u>935,379</u>        | <u>1,456,946</u>      | <u>3,830,215</u>       | <u>5,582,692</u>      |
| Gross profit (loss)   | 315,136               | 656,057               | (378,148)              | 2,149,621             |
| Operating expenses:   |                       |                       |                        |                       |
| Selling, general and administrative                                 | 899,116               | 1,432,920             | 3,854,782              | 4,654,095             |
| Research and development  | 125,924               | 214,116               | 448,920                | 631,799               |
| Impairment charge   | <u>—</u>              | <u>—</u>              | <u>3,397,212</u>       | <u>—</u>              |
| Total operating expenses  | <u>1,025,040</u>      | <u>1,647,036</u>      | <u>7,700,914</u>       | <u>5,285,894</u>      |
| Operating loss  | (709,904)             | (990,979)             | (8,079,062)            | (3,136,273)           |
| Non-operating income (expense):                                     |                       |                       |                        |                       |
| Interest expense  | (79,452)              | (41,576)              | (210,014)              | (97,198)              |
| Gain on debt restructuring  | 1,048,308             | —                     | 1,048,308              | —                     |
| Other income  | <u>17</u>             | <u>85</u>             | <u>107</u>             | <u>489</u>            |
| Total non-operating income (expense), net                           | <u>968,873</u>        | <u>(41,491)</u>       | <u>838,401</u>         | <u>(96,709)</u>       |
| Income (loss) from continuing operations                            | \$ 258,969            | \$ (1,032,470)        | \$ (7,240,661)         | \$ (3,232,982)        |
| Discontinued operations:  |                       |                       |                        |                       |
| Income from discontinued operations                                 | <u>—</u>              | <u>3,272</u>          | <u>683</u>             | <u>7,102</u>          |
| Net income (loss)   | <u>\$ 258,969</u>     | <u>\$ (1,029,198)</u> | <u>\$ (7,239,978)</u>  | <u>\$ (3,225,880)</u> |
| Accretion of preferred stock beneficial conversion feature          | <u>(5,195,225)</u>    | <u>—</u>              | <u>(5,195,225)</u>     | <u>—</u>              |
| Net loss attributable to common stockholders                        | <u>\$ (4,936,256)</u> | <u>\$ (1,029,198)</u> | <u>\$ (12,435,203)</u> | <u>\$ (3,225,880)</u> |
| Basic and diluted loss per common share:                            |                       |                       |                        |                       |
| Loss from continuing operations attributable to common stockholders | \$ (0.30)             | \$ (0.06)             | \$ (0.75)              | \$ (0.20)             |
| Discontinued operations   | <u>\$ 0.00</u>        | <u>\$ 0.00</u>        | <u>\$ 0.00</u>         | <u>\$ 0.00</u>        |
| Net loss attributable to common stockholders                        | <u>\$ (0.30)</u>      | <u>\$ (0.06)</u>      | <u>\$ (0.75)</u>       | <u>\$ (0.20)</u>      |
| Basic and diluted weighted average shares outstanding               | <u>16,517,955</u>     | <u>16,452,738</u>     | <u>16,474,716</u>      | <u>16,389,967</u>     |

See accompanying notes to unaudited consolidated financial statements.

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**Nexus Lighting, Inc.**  
**Consolidated Statements of Stockholders' Equity (Unaudited)**

|  | Preferred Stock |                    | Common Stock      |                 | Additional<br>Paid-in<br>Capital | Accumulated<br>Deficit | Total<br>Stockholders'<br>Equity |
|--|-----------------|--------------------|-------------------|-----------------|----------------------------------|------------------------|----------------------------------|
|  | Shares          | Amount             | Shares            | Amount          |                                  |                        |                                  |
| Balance, December 31, 2011   | —               | \$ —               | 16,452,738        | \$16,453        | \$50,007,362                     | \$(41,712,487)         | \$ 8,311,328                     |
| Stock-based compensation   | —               | —                  | —                 | —               | 44,313                           | —                      | 44,313                           |
| Issuance of convertible preferred stock,<br>net of issuance costs                      | 600,000         | —                  | —                 | —               | 5,195,225                        | —                      | 5,195,225                        |
| Accretion of preferred stock beneficial<br>conversion feature                          | —               | 5,195,225          | —                 | —               | (5,195,225)                      | —                      | —                                |
| Issuance of common stock for<br>convertible promissory notes, net of<br>issuance costs | —               | —                  | 1,000,000         | 1,000           | 586,900                          | —                      | 587,900                          |
| Net loss   | —               | —                  | —                 | —               | —                                | (7,239,978)            | (7,239,978)                      |
| Balance, September 30, 2012  | <u>600,000</u>  | <u>\$5,195,225</u> | <u>17,452,738</u> | <u>\$17,453</u> | <u>\$50,638,575</u>              | <u>\$(48,952,465)</u>  | <u>\$ 6,898,788</u>              |

See accompanying notes to unaudited consolidated financial statements.

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### **Nexus Lighting, Inc.** **Consolidated Statements of Cash Flows (Unaudited)**

|  | Nine Months Ended<br>September 30, |                      |
|--|------------------------------------|----------------------|
|  | 2012                               | 2011                 |
| <b>Cash Flows from Operating Activities:</b>                                 |                                    |                      |
| Net loss   | \$(7,239,978)                      | \$(3,225,880)        |
| Adjustments to reconcile net loss to net cash used in operating activities:  |                                    |                      |
| Depreciation   | 210,556                            | 349,295              |
| Amortization of other intangible assets                                      | 193,070                            | 214,299              |
| Amortization of debt discount and debt issuance costs                        | 68,976                             | 84,277               |
| Amortization of deferred rent  | (24,552)                           | (59,491)             |
| Impairment charge  | 3,397,212                          | —                    |
| Gain on debt restructuring   | (1,048,308)                        | —                    |
| Interest expense forgiven on debt restructuring                              | 140,667                            | —                    |
| Loss on sale of businesses   | —                                  | 622                  |
| Loss on disposal of property and equipment                                   | 6,062                              | 3,401                |
| Increase in inventory reserve and inventory write downs                      | 629,004                            | 114,470              |
| Stock-based compensation   | 44,313                             | 291,759              |
| Changes in operating assets and liabilities:                                 |                                    |                      |
| (Increase) decrease in:  |                                    |                      |
| Trade accounts receivable, net   | (30,166)                           | (145,709)            |
| Inventories  | 1,011,366                          | (253,612)            |
| Prepaid expenses   | (27,141)                           | 20,328               |
| Other assets   | 25,959                             | 8,847                |
| Increase (decrease) in:  |                                    |                      |
| Accounts payable, accrued liabilities and related party payable              | (178,950)                          | 280,413              |
| Accrued compensation and benefits  | (115,466)                          | 6,300                |
| Other liabilities  | 206                                | (3,369)              |
| Total adjustments  | 4,302,808                          | 911,830              |
| Net cash used in operating activities  | <u>\$(2,937,170)</u>               | <u>\$(2,314,050)</u> |
| <b>Cash Flows from Investing Activities:</b>                                 |                                    |                      |
| Patents, trademarks and other intangible assets costs                        | (83,076)                           | (134,321)            |
| Purchase of property and equipment   | (19,599)                           | (216,661)            |
| Proceeds from the sale of property and equipment                             | 7,685                              | 7,500                |
| Proceeds from the sale of businesses, net of transaction costs               | —                                  | 1,110,360            |
| Net cash (used in) provided by investing activities                          | <u>\$(94,990)</u>                  | <u>766,878</u>       |
| <b>Cash Flows from Financing Activities:</b>                                 |                                    |                      |
| Proceeds from issuance of convertible preferred stock, net of issuance costs | 5,195,225                          | —                    |
| Payment to restructure convertible promissory notes                          | (880,000)                          | —                    |
| Proceeds from exercise of employee stock options and warrants, net           | —                                  | 319,750              |
| Net cash provided by financing activities                                    | <u>4,315,225</u>                   | <u>319,750</u>       |
| Net increase (decrease) in Cash and Cash Equivalents                         | 1,283,065                          | (1,227,422)          |
| Cash and Cash Equivalents, beginning of period                               | <u>3,014,656</u>                   | <u>5,308,900</u>     |
| Cash and Cash Equivalents, end of period                                     | <u>\$ 4,297,721</u>                | <u>\$ 4,081,478</u>  |

*See accompanying notes to unaudited consolidated financial statements.*

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### **Nexus Lighting, Inc.**

#### **Notes to Consolidated Financial Statements (unaudited)**

The accompanying consolidated financial statements of Nexus Lighting, Inc. and subsidiary (the "Company") are unaudited, but in the opinion of management, reflect all adjustments (consisting only of normal recurring adjustments) necessary to fairly state the Company's financial position, results of operations, and cash flows as of and for the dates and periods presented. The financial statements of the Company are prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information.

These unaudited financial statements should be read in conjunction with the Company's audited financial statements and footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2011 filed with the Securities and Exchange Commission ("SEC"). The results of operations for the nine month period ended September 30, 2012 are not necessarily indicative of the results that may be expected for the entire year ending December 31, 2012 or for any future period.

The Company has experienced continued net losses and faces significant challenges in order to reach profitability, particularly in light of the current challenging economic environment. The Company expects continuing losses in 2012, further eroding its cash position. On April 30, 2012, the Company announced that it was exploring strategic alternatives available to it, including a possible sale of the Company. On September 12, 2012, the Company entered into an Investment Agreement with RVL 1 LLC (the "Investor"), an affiliate of Aston Capital, LLC. On September 25, 2012, the Company and the Investor closed the transactions contemplated by the Investment Agreement and the Company issued to the Investor 600,000 shares of newly-created Series B Convertible Preferred Stock, \$.001 par value per share (the "Preferred Stock") in consideration of a cash payment of \$6 million (the "Investment") (Note 8).

#### **1. Summary of Significant Accounting Policies:**

**Revenue recognition** – Generally, the Company recognizes revenue for its products upon shipment to customers, provided no significant obligations remain and collection is probable. For sales that include customer acceptance terms, revenue is recorded after customer acceptance. It is the Company's policy that all sales are final. Requests for returns are reviewed on a case by case basis. As revenue is recorded, the Company accrues an estimated amount for product returns as a reduction of revenue. The level of returns may fluctuate from the Company's estimate. The Company offers early payment discounts to select customers. Revenue is recorded net of the amount of the early payment discounts that the Company estimates will be claimed by customers. Our products typically carry a warranty that ranges from two to five years and includes replacement of defective parts. A warranty reserve is recorded for estimated costs associated with potential warranty expenses on previous sales.

**Financial instruments** – FASB Accounting Standards Codification ("ASC") 820 "Fair Value Measurements and Disclosures" ("ASC 820") defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. ASC 820 also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs that may be used to measure fair value:

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Inputs other than quoted prices included within Level 1 that are either directly or indirectly observable.

Level 3 - Unobservable inputs that are supported by little or no market activity, therefore requiring an entity to develop its own assumptions about the assumptions that market participants would use in pricing.

Fair value estimates discussed herein are based upon certain market assumptions and pertinent information available to management as of September 30, 2012. The Company uses the market approach to measure fair value for its Level 1 financial assets and liabilities, which includes cash equivalents of approximately \$458,000 at September 30, 2012 and \$2,674,000 at December 31, 2011, respectively. The market approach uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities. The respective carrying value of certain on-balance-sheet financial instruments approximated their fair values. These financial instruments include cash, trade receivables, related party payables, accounts payable and accrued liabilities. Fair values were assumed to approximate carrying values for these financial instruments since they are short term in nature and their carrying amounts approximate fair values or they are receivable or payable on demand.

The Company's non-financial assets measured at a fair value on a non-recurring basis include goodwill and long-lived assets, which utilize inputs classified as Level 3 in the fair value hierarchy (Notes 4 and 5).

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Derivative financial instruments – The Company does not use derivative instruments to hedge exposures to cash flow, market or foreign currency risk. Terms of convertible instruments are reviewed to determine whether or not they contain embedded derivative instruments that are required under FASB ASC 815 “Derivatives and Hedging” (“ASC 815”) to be accounted for separately from the host contract, and recorded on the balance sheet at fair value. The fair value of derivative liabilities, if any, is required to be revalued at each reporting date, with corresponding changes in fair value recorded in current period operating results.

Freestanding warrants issued by the Company in connection with the issuance or sale of debt and equity instruments are considered to be derivative instruments, and are evaluated and accounted for in accordance with the provisions of ASC 815. Pursuant to ASC 815, an evaluation of specifically identified conditions is made to determine whether the fair value of warrants issued is required to be classified as equity or as a derivative liability.

Beneficial conversion and warrant valuation – In accordance with FASB ASC 470-20, “Debt with Conversion and Other Options” the Company records a beneficial conversion feature (“BCF”) related to the issuance of convertible debt or preferred stock instruments that have conversion features at fixed rates that are in-the-money when issued. The BCF for the convertible instruments is recognized and measured by allocating a portion of the proceeds equal to the intrinsic value of that feature to additional paid-in capital. The intrinsic value is generally calculated at the commitment date as the difference between the conversion price and the fair value of the common stock or other securities into which the security is convertible, multiplied by the number of shares into which the security is convertible. If certain other securities, such as warrants, are issued with the convertible security, the proceeds are allocated among the different components. The portion of the proceeds allocated to the convertible security is divided by the contractual number of the conversion shares to determine the effective conversion price which is used to measure the BCF. The effective conversion price is used to compute the intrinsic value. The value of the BCF is limited to the basis that is initially allocated to the convertible security.

Cash equivalents – Temporary cash investments with an original maturity of three months or less are considered to be cash equivalents.

Accounts receivable – Accounts receivable are customer obligations due under normal trade terms. The Company performs continuing credit evaluations of its customers’ financial condition. The Company records an allowance for doubtful accounts based upon factors surrounding the credit risk of certain customers and specifically identified amounts that it believes to be uncollectible. Recovery of bad debt amounts previously written off is recorded as a reduction of bad debt expense in the period the payment is collected. If the Company’s actual collection experience changes, revisions to its allowance may be required. After all attempts to collect a receivable have failed, the receivable is written off against the allowance.

Inventories – Inventories, excluding inventories at Lumificent Corporation, are stated at the lower of cost (average cost) or market. Inventories at Lumificent Corporation are stated at the lower of cost (first-in, first-out) or market. A reserve is recorded for any inventory deemed excessive or obsolete.

Property and equipment – Property and equipment are stated at cost. Depreciation is computed by the straight-line method and is charged to operations over the estimated useful lives of the assets. Maintenance and repairs are charged to expense as incurred. The carrying amount and accumulated depreciation of assets sold or retired are removed from the accounts in the year of disposal and any resulting gain or loss is included in results of operations. The estimated useful lives of property and equipment are as follows:

|                         | <u>Estimated useful lives</u> |
|-------------------------|-------------------------------|
| Machinery and equipment | 3-20 years                    |
| Furniture and fixtures  | 5-7 years                     |
| Computers and software  | 3-7 years                     |
| Leasehold improvements  | 5 years                       |

Intangible assets and goodwill – The Company accounts for its intangible assets and goodwill under FASB ASC 350 “Intangibles – Goodwill and Other” (“ASC 350”) and FASB ASC 360 “Property, Plant, and Equipment” (“ASC 360”).

Goodwill is not amortized, but is subject to annual impairment testing unless circumstances dictate more frequent assessments. The Company performs an annual impairment assessment for goodwill as of the last day of each fiscal year and more frequently whenever events or changes in circumstances indicate that the fair value of the asset may be less than the carrying amount. Goodwill impairment testing is a two-step process performed at the reporting unit level. Step one compares the fair value of the reporting unit to its carrying amount. The fair value of the reporting unit is determined by considering both the income approach and the market approach. The fair values calculated

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under the income approach and market approach are weighted based on circumstances surrounding the reporting unit. Under the income approach, the Company determines fair value based on estimated future cash flows of the reporting unit which are discounted to the present value using discount factors that consider the timing and risk of cash flows. For the discount rate, the Company relies on the capital asset pricing model approach which includes an assessment of the risk-free interest rate, the rate of return from publically traded stocks, the Company's risk relative to the overall market, the Company's size and industry and other Company specific risks. Other significant assumptions used in the income approach include the terminal value, growth rates, future capital expenditures and changes in future working capital requirements. The market approach uses key multiples from guideline businesses that are comparable and are traded on a public market. If the fair value of the reporting unit is greater than its carrying amount, there is no impairment. If the reporting unit's carrying amount exceeds its fair value, then the second step must be completed to measure the amount of impairment, if any. Step two calculates the implied fair value of goodwill by deducting the fair value of all tangible and intangible net assets of the reporting unit from the fair value of the reporting unit as calculated in step one. In this step, the fair value of the reporting unit is allocated to all of the reporting unit's assets and liabilities in a hypothetical purchase price allocation as if the reporting unit had been acquired on that date. If the carrying amount of goodwill exceeds the implied fair value of goodwill, an impairment loss is recognized in an amount equal to the excess.

Determining the fair value of a reporting unit is judgmental in nature and requires the use of significant estimates and assumptions, including revenue growth rates, strategic plans and future market conditions, among others. There can be no assurance that the Company's estimates and assumptions made for purposes of the goodwill impairment testing will prove to be accurate predictions of the future.

Deferred rent – The Company accounts for certain operating leases containing predetermined fixed increases of the base rental rate during the lease term as rental expense on a straight-line basis over the lease term. The Company has recorded the difference between the amounts charged to operations and amounts payable under the leases as deferred rent in the accompanying consolidated balance sheets.

Long-lived assets – In accordance with ASC 360, the Company evaluates the recoverability of its long-lived assets whenever events or changes in circumstances have indicated that an asset may not be recoverable. The long-lived asset is grouped with other assets at the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. If the sum of the projected undiscounted cash flows is less than the carrying value of the assets, the assets will be written down to the estimated fair value.

Shipping and handling costs – Shipping and handling costs related to the acquisition of goods from vendors are included in cost of sales.

Research and development – Research and development costs to develop new products are charged to expense as incurred.

Income taxes – Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due plus deferred taxes resulting from temporary differences. Such temporary differences result from differences in the carrying value of assets and liabilities for tax and financial reporting purposes. The deferred tax assets and liabilities represent the future tax consequences of those differences, which will either be taxable or deductible when the assets and liabilities are recovered or settled. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized.

The Company applies the provisions of FASB ASC 740-10 "Uncertainty in Income Taxes" ("ASC 740-10"). The Company has not recognized a liability under ASC 740-10. A reconciliation of the beginning and ending amount of unrecognized tax benefits has not been provided since there is no unrecognized benefit since the date of adoption. If there were an unrecognized tax benefit, the Company would recognize interest accrued related to unrecognized tax benefits in interest expense and penalties in operating expenses.

The Company has provided a full valuation allowance against income tax benefits resulting from losses incurred and accumulated on operations. As a result, there was no provision for income tax recorded during the nine months ended September 30, 2012 and 2011, respectively. The Company believes the use of NOLs will be limited under the provisions of Section 382 of the Internal Revenue Code of 1986, as amended. The Company has not evaluated the implications of Section 382 on its ability to utilize some or all of its NOLs.

Use of estimates – The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

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**Loss per share** – Basic loss per share is computed by dividing net loss attributable to common stockholders by the weighted average common shares outstanding for the period. Diluted loss per share is computed giving effect to all potentially dilutive common shares. Potentially dilutive common shares may consist of incremental shares issuable upon the exercise of stock options and warrants and the conversion of outstanding convertible securities. In periods in which a net loss has been incurred, all potentially dilutive common shares are considered anti-dilutive and thus are excluded from the calculation. At September 30, 2012 and 2011, the Company had 48,870,542 and 7,472,607, respectively, common shares which may be acquired pursuant to outstanding employee stock options, warrants and convertible securities that were not included in the computation of loss per share at September 30, 2012 and 2011 because to do so would have been anti-dilutive.

**Stock-based compensation** – The Company accounts for stock-based compensation under the provisions of FASB ASC 718 “Compensation – Stock Compensation” (“ASC 718”), which requires the recognition of the cost of employee or director services received in exchange for an award of equity instruments in the financial statements and is measured based on the grant date fair value of the award. ASC 718 also requires the stock option compensation expense to be recognized over the period during which an employee is required to provide service in exchange for the award (typically, the vesting period).

The Company estimates the fair value of each option award issued under its stock option plans on the date of grant using a Black-Scholes option-pricing model that uses the assumptions noted below in accordance with ASC 718. The Company estimates the volatility of its common stock at the date of grant based on the historical volatility of its common stock. These historical periods may exclude portions of time when unusual transactions occurred. The Company determines the expected life based on historical experience with similar awards, giving consideration to the contractual terms, vesting schedules and post-vesting forfeitures. For shares that vest contingent upon achievement of certain performance criteria, an estimate of the probability of achievement is applied in the estimate of fair value. If the goals are not met, no compensation cost is recognized and any previously recognized compensation cost is reversed. The Company bases the risk-free interest rate on the implied yield currently available on U.S. Treasury issues with an equivalent remaining term approximately equal to the expected life of the award. The Company has never paid any cash dividends on its common stock and does not anticipate paying any cash dividends in the foreseeable future. In addition, the Company separates the grants into homogeneous groups and analyzes the assumptions for each group. The Company then computes the expense for each group utilizing these assumptions.

|                             | Nine Months Ended September 30, |              |
|-----------------------------|---------------------------------|--------------|
|                             | 2012                            | 2011         |
| Expected volatility         | 75.8 – 115.4%                   | 71.7 – 84.7% |
| Weighted-average volatility | 76.6%                           | 81.0%        |
| Risk-free interest rate     | 0.4 – 0.9%                      | 0.4 – 2.2%   |
| Expected dividend           | 0%                              | 0%           |
| Expected life in years      | 3.5 – 8.6                       | 3.5 – 8.6    |

Under ASC 718, stock-based compensation expense recognized in the accompanying unaudited statements of operations for the three months ended September 30, 2012 and 2011 was \$227 and \$88,944, respectively, which caused net loss to increase by that amount and basic and diluted loss per share for the three months ended September 30, 2012 and 2011 to increase by \$0.00 and \$0.01, respectively. Stock-based compensation expenses recognized in the accompanying unaudited statements of operations for the nine months ended September 30, 2012 and 2011 was \$44,313 and \$291,759, respectively, which caused net loss to increase by that amount and basic and diluted loss per share for the nine months ended September 30, 2012 and 2011 to increase by \$0.00 and \$0.02, respectively.

**Business segments** – Pursuant to FASB ASC 280 “Segment Reporting”, the Company is required to report segment information. The Company’s operations are principally managed on a product basis and are comprised of two reportable segments for financial purposes: LED replacement lamps and LED signage and lighting strips.

**Recent accounting pronouncements** – In September 2011, the FASB amended the guidance on the annual testing of goodwill for impairment. The amended guidance will allow companies to assess qualitative factors to determine if it is more likely than not that goodwill might be impaired and whether it is necessary to perform the two-step goodwill impairment test required under current accounting standards. The guidance is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011, with early adoption permitted. The adoption of this guidance did not have a material impact on the Company’s financial statements.

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### 2. Discontinued Operations:

On October 28, 2010, the Company signed an Asset Purchase Agreement (the "Purchase Agreement") with Next Step Products, LLC. Pursuant to the Purchase Agreement, the Company sold substantially all of the assets of its legacy commercial and pool lighting businesses. The results of operations of the legacy commercial and pool lighting businesses have been reflected as discontinued operations for all periods presented.

The components of discontinued operations for the three and nine months ended September 30, 2012 and 2011 are as follows:

|                         | Three Months Ended September 30, |          | Nine Months Ended September 30, |           |
|-------------------------|----------------------------------|----------|---------------------------------|-----------|
|                         | 2012                             | 2011     | 2012                            | 2011      |
| Revenue                 | \$ —                             | \$ 3,272 | \$ 683                          | \$ 10,766 |
| Income from operations  | \$ —                             | \$ 3,272 | \$ 683                          | \$ 7,102  |
| Discontinued operations | \$ —                             | \$ 3,272 | \$ 683                          | \$ 7,102  |

### 3. Inventories:

Inventories consist of the following:

|                         | (Unaudited)        |                   |
|-------------------------|--------------------|-------------------|
|                         | September 30, 2012 | December 31, 2011 |
| Raw materials           | \$ 1,564,110       | \$ 1,708,642      |
| Finished goods          | 1,296,986          | 2,163,820         |
|                         | 2,861,096          | 3,872,462         |
| Less: inventory reserve | (1,524,419)        | (895,415)         |
| Net inventories         | \$ 1,336,677       | \$ 2,977,047      |

As a result of deteriorating market conditions and aggressive pricing by competitors, the Company experienced a decrease in market price for certain products in its LED replacement lamps segment. For the nine months ended September 30, 2012, the Company recorded a write down of inventory of \$387,196 due to this decrease in market price.

### 4. Other Intangible Assets:

At September 30, 2012, the Company had the following intangible assets subject to amortization:

|   | (Unaudited)           |                          |                     |
|---|-----------------------|--------------------------|---------------------|
|   | September 30, 2012    |                          |                     |
|   | Gross Carrying Amount | Accumulated Amortization | Net Carrying Amount |
| Patents                                   | \$ 267,904            | \$ (100,921)             | \$ 166,983          |
| Trademarks                                | 880,000               | (228,629)                | 651,371             |
| Customer relationships                    | 1,010,000             | (446,083)                | 563,917             |
| Product certification and licensing costs | 61,017                | (24,447)                 | 36,570              |
|   | \$ 2,218,921          | \$ (800,080)             | \$ 1,418,841        |

As a result of the Company's deteriorating business and significantly reduced market value as of June 30, 2012, the Company performed the impairment test prescribed by ASC 360 for long-lived assets in the Company's LED signage and lighting strips segment (which is also one of the Company's asset groups). The Company determined that there was no impairment of long-lived assets for the LED signage and lighting strips asset group as its undiscounted cash flows were greater than its carrying amount as of June 30, 2012.

As a result of the Company's deteriorating business and significantly reduced market value as of June 30, 2012, the Company performed the impairment test prescribed by ASC 360 for long-lived assets in the Company's LED

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replacement lamps segment (which is also one of the Company's asset groups) and determined that the carrying amount of the asset group was not recoverable as its undiscounted cash flows were less than its carrying amount. The Company further determined that the fair value of the asset group was less than its carrying value and therefore impairment must be recorded. The Company used the discounted cash flow method under the income approach to determine the fair value of the asset group. The impairment amount was determined by allocating the shortfall of fair value as compared to the carrying amount to each long-lived asset in the asset group on a pro rata basis using the relative carrying amount of the assets, except the carrying amount of each asset can not be reduced below its fair value. To determine the fair value of each long-lived asset, the Company used the relief from royalty method for the patents and trademarks and estimated the fair value for the property and equipment and product certifications and licensing costs using a cost approach adjusted for physical, functional and economic obsolescence. For the LED replacement lamps asset group, the Company recorded impairment charges totaling \$996,492 for other intangible assets and \$393,157 for property and equipment. In addition, the Company recorded an impairment charge of \$18,643 for other intangible assets included in its corporate business unit.

At June 30, 2012, the Company recognized the following impairment charges for other intangible assets in the Company's LED replacement lamps segment and its corporate business unit:

|   | Gross Carrying<br>Amount | Accumulated<br>Amortization | Net Carrying<br>Amount Prior to<br>Impairment | Impairment<br>Recognized | Net Carrying<br>Amount at<br>June 30, 2012 |
|---|--------------------------|-----------------------------|---|--------------------------|--|
| Patents                                   | \$ 1,073,188             | \$ (138,851)                | \$ 934,337                                    | \$ (934,337)             | \$ —                                       |
| Trademarks                                | 28,998                   | (3,509)                     | 25,489  | (25,489)                 | —  |
| Product certification and licensing costs | 125,427                  | (70,118)                    | 55,309  | (55,309)                 | —  |
|   | <u>\$ 1,227,613</u>      | <u>\$ (212,478)</u>         | <u>\$ 1,015,135</u>                           | <u>\$ (1,015,135)</u>    | <u>\$ —</u>                                |

At December 31, 2011, the Company had the following intangible assets subject to amortization:

|   | December 31, 2011        |                             |                        |
|---|--------------------------|-----------------------------|------------------------|
|   | Gross Carrying<br>Amount | Accumulated<br>Amortization | Net Carrying<br>Amount |
| Patents                                   | \$ 1,286,437             | \$ (197,803)                | \$1,088,634            |
| Trademarks                                | 908,998                  | (192,461)                   | 716,537                |
| Customer relationships                    | 1,010,000                | (370,333)                   | 639,667                |
| Non-compete agreement                     | 60,000                   | (55,000)                    | 5,000                  |
| Product certification and licensing costs | 158,024                  | (63,893)                    | 94,131                 |
|   | <u>\$ 3,423,459</u>      | <u>\$ (879,490)</u>         | <u>\$2,543,969</u>     |

Remaining estimated annual amortization expense is as follows:

| Year Ending December 31: |                    |
|--------------------------|--------------------|
| 2012                     | \$ 49,082          |
| 2013                     | 192,383            |
| 2014                     | 186,659            |
| 2015                     | 180,381            |
| 2016                     | 175,980            |
| Thereafter               | 634,356            |
|                          | <u>\$1,418,841</u> |

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### 5. Goodwill:

The changes in the carrying amount of goodwill for the year ended December 31, 2011 and the nine months ended September 30, 2012 are as follows:

|                               | LED<br>Replacement<br>Lamps | LED Signage<br>and Lighting<br>Strips | Total        |
|-------------------------------|-----------------------------|---------------------------------------|--------------|
| Goodwill                      | \$ 1,988,920                | \$ 407,369                            | \$ 2,396,289 |
| Accumulated impairment losses | —                           | —                                     | —            |
| Balance, January 1, 2011      | 1,988,920                   | 407,369                               | 2,396,289    |
| Impairment loss               | —                           | (407,369)                             | (407,369)    |
| Goodwill                      | 1,988,920                   | 407,369                               | 2,396,289    |
| Accumulated impairment losses | —                           | (407,369)                             | (407,369)    |
| Balance, December 31, 2011    | \$ 1,988,920                | \$ —                                  | \$ 1,988,920 |
| Impairment loss               | (1,988,920)                 | —                                     | (1,988,920)  |
| Goodwill                      | 1,988,920                   | 407,369                               | 2,396,289    |
| Accumulated impairment losses | (1,988,920)                 | (407,369)                             | (2,396,289)  |
| Balance, September 30, 2012   | \$ —                        | \$ —                                  | \$ —         |

As a result of the Company's deteriorating business and significantly reduced market value as of June 30, 2012, the Company performed the impairment test prescribed by ASC 350 for the Company's LED replacement lamps segment (which is also one of the Company's reporting units) and recorded a goodwill impairment charge totaling \$1,988,920 for the quarter ended June 30, 2012.

As a result of lowering the projected revenue growth and cashflows for the LED signage and lighting strips segment, the Company performed the impairment test prescribed by ASC 350 for the Company's LED signage and lighting strips segment (which is also one of the Company's reporting units) and recorded a goodwill impairment charge totaling \$407,369 for the year ended December 31, 2011.

Goodwill impairment testing is a two-step process performed at the reporting unit level. Step one compares the fair value of the reporting unit to its carrying amount. The fair value of the reporting unit is determined by considering both the income approach and the market approach. The fair values calculated under the income approach and market approach are weighted based on circumstances surrounding the reporting unit. Under the income approach, the Company determines fair value based on estimated future cash flows of the reporting unit which are discounted to the present value using discount factors that consider the timing and risk of cash flows. For the discount rate, the Company relies on the capital asset pricing model approach which includes an assessment of the risk-free interest rate, the rate of return from publically traded stocks, the Company's risk relative to the overall market, the Company's size and industry and other Company specific risks. Other significant assumptions used in the income approach include the terminal value, growth rates, future capital expenditures and changes in future working capital requirements. The market approach uses key multiples from guideline businesses that are comparable and are traded on a public market. If the fair value of the reporting unit is greater than its carrying amount, there is no impairment. If the reporting unit's carrying amount exceeds its fair value, then the second step must be completed to measure the amount of impairment, if any. Step two calculates the implied fair value of goodwill by deducting the fair value of all tangible and intangible net assets of the reporting unit from the fair value of the reporting unit as calculated in step one. In this step, the fair value of the reporting unit is allocated to all of the reporting unit's assets and liabilities in a hypothetical purchase price allocation as if the reporting unit had been acquired on that date. If the carrying amount of goodwill exceeds the implied fair value of goodwill, an impairment loss is recognized in an amount equal to the excess.

Determining the fair value of a reporting unit is judgmental in nature and requires the use of significant estimates and assumptions, including revenue growth rates, strategic plans and future market conditions, among others. There can be no assurance that the Company's estimates and assumptions made for purposes of the goodwill impairment testing will prove to be accurate predictions of the future.

### 6. Stock-Based Compensation:

The Company adopted a stock option plan in 1994 (the "1994 Plan") that provided for the grant of incentive stock options and nonqualified stock options, and reserved 450,000 shares of the Company's common stock for future issuance under the plan. The option price must have been at least 100% of market value at the date of the grant and the options have a maximum term of 10 years. Options granted typically vest ratably over a three-year period or based on achievement of performance criteria. The Company typically grants selected executives and other key employees share option awards, whose vesting is contingent upon meeting various departmental and company-wide performance goals including sales targets and net profit targets. As of September 30, 2012, options to purchase 12,000 shares of common stock were vested and exercisable under the 1994 Plan. The 1994 Plan terminated in 2004.

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On September 18, 2003, the Company adopted a new stock option plan (the “2003 Plan”) that provides for the grant of incentive stock options and nonqualified stock options, and reserved 450,000 additional shares of the Company’s common stock for future issuance under the plan. The 2003 Plan was subsequently amended to increase the number of shares reserved for issuance thereunder to 670,000. During 2008, the 2003 Plan was further amended to increase the number of shares reserved for issuance to 810,000. During 2010, the 2003 Plan was further amended to increase the number of shares reserved for issuance thereunder to 1,160,000. The option price of incentive stock options must be at least 100% of market value at the date of the grant and incentive stock options have a maximum term of 10 years. Options granted typically vest ratably over a three-year period or based on achievement of performance criteria. The Company typically grants selected executives and other key employees share option awards, whose vesting is contingent upon meeting various departmental and company-wide performance goals including sales targets and net profit targets. As of September 30, 2012, options to purchase 689,167 shares of common stock were vested and exercisable under the 2003 Plan. In 2009, the Company amended the 2003 Plan to extend the post-service termination exercise period of nonstatutory stock options granted to directors for their service to the Company as directors from three months after the director’s termination date to the tenth anniversary of the date of grant.

The following table summarizes activity in the stock option plans for the nine months ended September 30, 2012:

|                              | Shares<br>Available<br>for Future<br>Grant | Number of<br>Shares<br>Outstanding<br>Under Option | Weighted<br>Average<br>Exercise<br>Price |
|------------------------------|--|--|--|
| Balance, January 1, 2011     | 423,618                                    | 670,355  | \$ 4.60                                  |
| Options granted at market    | (224,250)                                  | 224,250  | 2.32                                     |
| Options forfeited or expired | <u>154,585</u>                             | <u>(157,585)</u>                                   | <u>2.95</u>                              |
| Balance, December 31, 2011   | 353,953                                    | 737,020  | \$ 4.26                                  |
| Options granted at market    | (52,250)                                   | 52,250   | 0.53                                     |
| Options forfeited or expired | <u>79,750</u>                              | <u>(82,750)</u>                                    | <u>1.83</u>                              |
| Balance, September 30, 2012  | <u>381,453</u>                             | <u>706,520</u>                                     | <u>\$ 4.27</u>                           |

The weighted average fair value of options granted at market during the nine months ended September 30, 2012 and 2011 was \$0.39 and \$2.26 per option, respectively. The total intrinsic value of options exercised during the nine months ended September 30, 2012 and 2011 was \$0. The aggregate intrinsic value of the outstanding exercisable options at September 30, 2012 and 2011 was \$0.

## **7. Convertible Promissory Notes and Warrants:**

On December 21, 2009, the Company issued \$2,400,000 in principal of convertible promissory notes (the “Exchange Notes”) and warrants to purchase an aggregate of 935,040 shares of the Company’s common stock (the “Exchange Warrants”) in exchange for 480 shares of outstanding Series A Preferred Stock (the “Exchange”). The Preferred Shareholders holding the 480 shares of Preferred Stock, which had a stated value of \$2,400,000, were Michael Brown, a former director of the Company and affiliates of Mariner Private Equity, LLC, of which Patrick Doherty, a former director of the Company, is president. The Exchange Notes bore interest at 1% per annum, matured three years from the date of issuance and were convertible into 450,281 shares of common stock at a fixed conversion price of \$5.33. The Exchange Warrants have an exercise price of \$5.08 and expire three years from issuance. There were no price-based anti-dilution provisions in the Exchange Notes or Exchange Warrants.

On February 28, 2012, the Company and the holders of the Exchange Notes amended the Exchange Notes. As of the amendment date, the Exchange Notes bore interest at 10% per annum and matured on June 30, 2013. Interest on the outstanding principal amount of the Exchange Notes was due and payable on the maturity date. The Exchange Notes remained convertible into 450,281 shares of Common Stock at a fixed conversion price of \$5.33.

Concurrent with closing the Investment by RVL 1 LLC (Note 8), on September 25, 2012, the holders of the Exchange Notes exchanged the Exchange Notes for a total of \$880,000 in cash (which payment was funded at closing from the proceeds of the Investment) and 1,000,000 newly-issued shares of the Company’s Common Stock (the “Note Exchange”). The Note Exchange was consummated pursuant to the terms of a termination and exchange agreement (the “Termination and Exchange Agreement”) entered into by the Company and the holders of the Exchange Notes on September 12, 2012, providing for the extinguishment of the indebtedness represented by the Exchange Notes concurrent with and subject to the Investment.

The Company accounted for this transaction as a troubled debt restructuring in accordance with FASB ASC 470-60, “Troubled Debt Restructurings by Debtors”. The Company recognized a gain on debt restructuring equal to the excess of the carrying amount of the Exchange Notes and related accrued interest of \$140,667 over the fair value of the cash and Common Stock issued in the Note Exchange. For the three months ended September 30, 2012, the Company recognized a gain on debt restructuring of \$1,048,308, which caused basic and diluted loss per share for the three and nine months ended September 30, 2012 to decrease by \$0.06. After recording the \$1,048,308 gain on debt restructuring, the termination of the Exchange Notes resulted in an increase in the Company’s Stockholders’ Equity of \$1,636,208.

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The Exchange Warrants issued in conjunction with the Exchange Notes remain outstanding. The Exchange Warrants continue to have an exercise price of \$5.08 and expire on December 21, 2012.

### **8. Preferred Stock:**

On September 30, 2012, the Company is authorized to issue 5,000,000 shares of preferred stock, of which 3,000 shares have been designated as Series A Preferred Stock and 1,000,000 shares have been designated as Series B Convertible Preferred Stock. The Company has no shares of Series A Preferred Stock outstanding.

On September 12, 2012, the Company entered into an Investment Agreement (the "Investment Agreement") with RVL 1 LLC (the "Investor"), an affiliate of Aston Capital, LLC. The closing of the Investment occurred on September 25, 2012. In consideration of a cash payment of \$6 million (the "Investment"), the Company issued to the Investor 600,000 shares of newly-created Series B Convertible Preferred Stock, \$.001 par value per share (the "Preferred Stock"). The Preferred Stock is convertible into shares of the Company's common stock, \$.001 par value per share (the "Common Stock") at a conversion price per share equal to \$0.13, subject to certain anti-dilution adjustments. The conversion price was the closing price of the Company's Common Stock on August 2, 2012, the date the Company entered into the letter of intent with respect to the Investment. The proceeds from the Investment were used to extinguish the Exchange Notes and related accrued interest (Note 7), to fund a settlement payment in connection with the settlement of the Philips lawsuit described in Note 11, to pay the fees and expenses in connection with the Investment and for working capital purposes.

After giving effect to the conversion of the Preferred Stock and the other transactions contemplated by the Investment Agreement, the Investor would own 46,153,846 as-converted common shares, or approximately 73% of the Company's outstanding Common Stock. At September 30, 2012, the Preferred Stock represented approximately 73% of the outstanding voting stock of the Company on an as-converted basis and resulted in a change in control of the Company. The Investor is entitled to vote the Preferred Stock on an as-converted basis with the Company's Common Stock. On October 3, 2012, the Investor converted 228,186 shares of Preferred Stock into 17,552,769 shares of Common Stock.

The Preferred Stock has a liquidation preference of \$10 per share and will share ratably on an as-converted basis with the Company's Common Stock in the payment of dividends and distributions. In addition, the Company is prohibited from taking certain actions specified in the Certificate of Designations with respect to the Preferred Stock without the consent of the holders of at least a majority of the then outstanding shares of Preferred Stock.

The Company has concluded that the Preferred Stock is more akin to an equity-type instrument than a debt-type instrument. As the embedded conversion option in the Preferred Stock is clearly and closely related to an equity-type host, the conversion option does not require classification and measurement as a derivative financial instrument.

A beneficial conversion feature ("BCF") is recorded when the consideration allocated to a convertible security, divided by the number of common shares into which the security converts, is below the fair value of the common stock at the commitment date. The Company's Common Stock price on the date of the Investment Agreement was \$0.13 per share, which is equal to the conversion price of the Preferred Stock. As the Investment Agreement included certain conditions for closing, the commitment date for the Investment is deemed to be the date the Preferred Stock is issued. On September 25, 2012, the closing date of the Investment, the Company's Common Stock price had increased to \$0.59 per share. As a result of the increase in the Company's Common Stock price between the dates of the Investment Agreement and the closing of the Investment, the Company has recognized a BCF. The value of the BCF is limited to the basis that is initially allocated to the convertible security. The Company received cash proceeds, net of transactions costs, totaling \$5,195,225 for the Preferred Stock. The Company allocated the entire net proceeds of \$5,195,225 to the BCF which is initially recorded in additional paid-in capital. The BCF is treated as a deemed dividend on the Preferred Stock and is accreted to the Preferred Stock using the effective interest method through the date of earliest conversion. As the Preferred Stock is immediately convertible, the Company included a deduction of \$5,195,225 in determining loss per share for the three and nine months ended September 30, 2012. The aforementioned deduction had no impact on the Company's Stockholders' Equity.

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The rules of The NASDAQ Stock Market (“NASDAQ”) would have normally required that Nexxus’ stockholders approve the Investment prior to closing the transactions contemplated by the Investment Agreement. However, NASDAQ granted Nexxus an exception from this stockholder voting requirement under Listing Rule 5635(f), which provides that an exception may be granted when (i) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and (ii) reliance on such exception has been expressly approved by the audit committee of the board of directors comprised solely of independent, disinterested directors. NASDAQ also has granted Nexxus an exception from the voting rights requirements of Listing Rule 5640 and IM-5640 with respect to the transactions contemplated by the Investment Agreement.

### 9. Vendor Concessions:

As the Company’s financial condition deteriorated during the last several months, it became necessary for the Company to accelerate its cash conservation measures, including delaying or withholding payments to vendors. In conjunction with the Investment by RVL 1 LLC, certain accounts payable vendors and service providers agreed to accept payments less than the outstanding balance owed to them. For the three months ended September 30, 2012, the Company recognized a gain from vendor concessions of \$153,522 which is included in selling, general and administrative expense and caused basic and diluted loss per share for the three and nine months ended September 30, 2012 to decrease by \$0.01. As a result of the Investment and subsequent payments to our suppliers and service providers, the Company believes it has successfully restored its relationship and credit with the Company’s primary vendors.

### 10. Segment Reporting:

The Company’s operations are principally managed on a product basis and are comprised of two reportable segments for financial purposes: LED replacement lamps and LED signage and lighting strips. The Array® product line consists of white light LED replacement lamps. The Lumificient product line consists of LED signage and lighting strips.

Financial information relating to the reportable operating segments for the three and nine months ended September 30, 2012 and 2011 is presented below:

|  | <u>Three Months Ended September 30,</u> |                       | <u>Nine Months Ended September 30,</u> |                       |
|--|---|-----------------------|--|-----------------------|
|  | <u>2012</u>                             | <u>2011</u>           | <u>2012</u>                            | <u>2011</u>           |
| Revenues from external customers:        |   |                       |  |                       |
| LED replacement lamps                    | \$ 117,519                              | \$ 1,155,697          | \$ 577,389                             | \$ 4,750,958          |
| LED signage and lighting strips          | <u>1,132,996</u>                        | <u>957,306</u>        | <u>2,874,678</u>                       | <u>2,981,355</u>      |
| Total revenues from external customers   | <u>\$ 1,250,515</u>                     | <u>\$ 2,113,003</u>   | <u>\$ 3,452,067</u>                    | <u>\$ 7,732,313</u>   |
| Segment (loss) income:                   |   |                       |  |                       |
| LED replacement lamps                    | \$ (161,487)                            | \$ (7,460)            | \$ (5,631,881)                         | \$ (110,999)          |
| LED signage and lighting strips          | <u>46,424</u>                           | <u>19,274</u>         | <u>(103,694)</u>                       | <u>49,896</u>         |
| Segment (loss) income                    | (115,063)                               | 11,814                | (5,735,575)                            | (61,103)              |
| Unallocated amounts:                     |   |                       |  |                       |
| Corporate expenses                       | (594,841)                               | (1,002,793)           | (2,343,487)                            | (3,075,243)           |
| Interest income                          | 17                                      | 85                    | 107                                    | 489                   |
| Interest expense                         | (79,452)                                | (41,576)              | (210,014)                              | (97,125)              |
| Gain on debt restructuring               | <u>1,048,308</u>                        | <u>—</u>              | <u>1,048,308</u>                       | <u>—</u>              |
| Income (loss) from continuing operations | <u>\$ 258,969</u>                       | <u>\$ (1,032,470)</u> | <u>\$ (7,240,661)</u>                  | <u>\$ (3,232,982)</u> |
| Depreciation and amortization:           |   |                       |  |                       |
| LED replacement lamps                    | \$ 385                                  | \$ 72,688             | \$ 110,911                             | \$ 205,633            |
| LED signage and lighting strips          | <u>57,592</u>                           | <u>63,884</u>         | <u>178,533</u>                         | <u>189,571</u>        |
| Segment depreciation and amortization    | 57,977                                  | 136,572               | 289,444                                | 395,204               |
| Corporate depreciation and amortization  | <u>7,245</u>                            | <u>56,301</u>         | <u>114,182</u>                         | <u>168,390</u>        |
| Total depreciation and amortization      | <u>\$ 65,222</u>                        | <u>\$ 192,873</u>     | <u>\$ 403,626</u>                      | <u>\$ 563,594</u>     |

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### **11. Contingencies:**

In the ordinary course of business the Company may become a party to various legal proceedings generally involving collection actions, contractual matters, infringement actions, product liability claims and other matters.

On March 26, 2012, Koninklijke Philips Electronics N.V. and Philips Solid-State Lighting Solutions, Inc. (collectively, "Philips") filed a lawsuit (civil action no. 12-cv-10549) in the United States District Court for the District of Massachusetts against the Company alleging that the Company's Array and certain other products infringe certain of Philips' patents for LED lighting. In September 2012, the Company entered into a settlement agreement ending the patent litigation brought by Philips. In connection with the settlement and patent license agreement, Philips granted the Company an ongoing, royalty-bearing license to the comprehensive portfolio of patented LED technologies and solutions offered under Philips' LED luminaire and retrofit bulb licensing program. The license allows Nexxus to continue the manufacture and sale of LED-based lighting products, including the Array® brand of LED replacement light bulbs. In September 2012, Nexxus paid Philips a one-time, lump-sum royalty fee to address past sales. In conjunction with the settlement and patent license agreement, on October 3, 2012, the parties filed a joint stipulation requesting dismissal of the lawsuit and on October 4, 2012 the action was dismissed without prejudice.

On July 27, 2012, the Company received a letter from a vendor's attorney threatening litigation relating to inventory this vendor is holding for future use and sale to the Company. The Company settled this matter with the vendor in September 2012.

The Company settled the above contingencies at the time of the Investment closing. In September 2012, the Company paid \$265,000 to settle these matters.

On May 10, 2011, the CAO Group, Inc. ("CAO") filed a lawsuit (civil action no. 2:11-cv-00426) in the United States District Court for the District of Utah Central Division against the Company alleging that the Company's Array and certain other products infringe certain of CAO's patents for LED lighting. The complaint also lists GE Lighting, Osram Sylvania, Lighting Science Group Corporation, Sharp Electronics Corporation, Toshiba International Corporation, Feit Electric Company, Inc., and Lights of America, Inc. as defendants. The plaintiff is seeking injunctive relief, monetary damages and reimbursement of its attorney's fees and costs. The Company is evaluating CAO's claims. The Company intends to vigorously defend its products and intellectual property.

### **12. Subsequent Events:**

On October 3, 2012, the Investor converted 228,186 shares of Preferred Stock into 17,552,769 shares of Common Stock.

On May 9, 2012, the Company received a letter from the Listing Qualifications Department of The Nasdaq Stock Market notifying the Company that the minimum bid price per share for its common stock fell below \$1.00 for a period of 30 consecutive business days and that therefore the Company did not meet the minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2). The Company was initially provided 180 calendar days, or until November 5, 2012, to regain compliance with the minimum bid price requirement.

On November 7, 2012, Nasdaq granted the Company's request for an additional 180-days, or until May 6, 2013, for the Company to regain compliance with the minimum bid price requirement.

**Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

**Special Note Regarding Forward-Looking Statements**

The following discussion and analysis provides information that management believes is useful in understanding our operating results, cash flows and financial condition. The discussion should be read in conjunction with, and is qualified in its entirety by reference to, the unaudited Consolidated Financial Statements and Notes thereto appearing elsewhere in this report and the audited Financial Statements and related Notes to Financial Statements contained in our Annual Report on Form 10-K for the year ended December 31, 2011. All references in this report on Form 10-Q to “Nexus,” “Nexus Lighting,” “the Company,” “we,” “us,” “our company,” or “our” refer to Nexus Lighting, Inc. and its consolidated subsidiary, except where it is clear that such terms mean only Nexus Lighting, Inc. or our subsidiary Lumificient Corporation (“Lumificient”).

Except for the historical information contained herein, the discussions in this report contain certain forward-looking statements within the meaning of the “safe-harbor” provisions of the Private Securities Litigation Reform Act of 1995, as amended, the attainment of which involve various risks and uncertainties. Forward-looking statements may be identified by the use of forward-looking terminology such as “may”, “should”, “expect”, “plan”, “believe”, “estimate”, “anticipate”, “continue”, “predict”, “forecast”, “intend”, “potential”, or similar terms, variations of those terms or the negative of those terms. Our actual results may differ materially from those described in these forward-looking statements. The forward-looking statements are subject to risks, uncertainties and assumptions, including, among other factors:

- our history of losses and anticipated future losses;
- the risk that any reorganization of our company, operations and/or product offerings, may cause us to incur greater losses and create disruptions in our business;
- the risk that we may be unable to obtain sufficient capital to continue operations;
- the risk that we may not be able to maintain adequate liquidity or remain viable if we are unable to successfully manage our costs and expenses, increase revenue, or raise capital, as needed;
- the risk that demand for our Array® brand of LED light bulbs fails to emerge as anticipated and the potential failure to make adjustments to our operating plan necessary as a result of any failure to forecast accurately;
- the risk that any investments in new business strategies or acquisitions may distract management from current operations and result in greater than expected liabilities and expenses, inadequate return of capital, additional indebtedness and/or dilution to our stockholders;
- competition in each of our product areas, including price competition;
- dependence on suppliers and third-party manufacturers;
- the success of our sales, marketing and product development efforts;
- the condition of the international marketplace;
- general economic and business conditions;
- the evolving nature of our LED lighting technology;
- our ability to adequately protect our intellectual property rights;
- the risk that infringement claims by others may subject us to significant costs even if the claims are invalid and that an adverse outcome in litigation could subject us to significant liabilities, require us to license disputed rights from others or require us to cease marketing or using certain products or technologies; and
- our majority stockholder controls the outcome of all matters submitted for stockholder action, including the composition of our Board of Directors and the approval of significant corporate transactions and we have elected to be governed as a “controlled company” pursuant to the rules of The Nasdaq Capital Market.

Additional information concerning these or other factors which could cause actual results to differ materially from those contained or projected in, or even implied by, such forward-looking statements is contained in this report and also from time to time in our other Securities and Exchange Commission filings. Readers should carefully review the risk factors described in other documents we file from time to time with the Securities and Exchange Commission, including our Annual Report on Form 10-K for the year ended December 31, 2011. Although we believe that the assumptions underlying the forward-looking statements are reasonable, any of the assumptions could prove inaccurate and, therefore, there can be no assurance that the forward-looking information will prove to be accurate. Neither our company nor any other person assumes responsibility for the accuracy and completeness of these forward-looking statements. We are under no duty to update any of the forward-looking statements after the date of this report on Form 10-Q to conform our prior statements to actual results.

**Recent Events**

On September 12, 2012, we entered into an Investment Agreement (the “Investment Agreement”) with RVL 1 LLC (the “Investor”), an affiliate of Aston Capital, LLC. The closing of the Investment occurred on September 25, 2012. In consideration of a cash payment of \$6 million (the “Investment”), we issued to the Investor 600,000 shares of newly-created Series B Convertible Preferred Stock, \$.001 par value per share (the “Preferred Stock”). The Preferred Stock is convertible into shares of our common stock, \$.001 par value per share (the “Common Stock”) at a conversion price per share equal to \$0.13, subject to certain anti-dilution adjustments. The conversion price was the closing price of the Company’s Common Stock on August 2, 2012, the date the Company entered into the letter of intent with respect to the Investment. The proceeds from the Investment were used to extinguish approximately \$2.5 million of existing short term debt, to fund a settlement payment in connection with the settlement of the Philips lawsuit described below, to pay the fees and expenses in connection with the Investment and for working capital purposes.

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After giving effect to the conversion of the Preferred Stock and the other transactions contemplated by the Investment Agreement, the Investor owns 46,153,846 shares, or approximately 73% of the Company's outstanding Common Stock. The Preferred Stock represents approximately 73% of the outstanding voting stock of the Company on an as-converted basis and resulted in a change in control of the Company. The Investor is entitled to vote the Preferred Stock on an as-converted basis with the Company's Common Stock.

The Preferred Stock has a liquidation preference of \$10 per share. The Preferred Stock also will share ratably on an as-converted basis with the Company's Common Stock in the payment of dividends and distributions. In addition, the Company is prohibited from taking certain actions specified in the Certificate of Designations with respect to the Preferred Stock without the consent of the holders of at least a majority of the then outstanding shares of Preferred Stock.

A portion of the proceeds from the Investment were used in connection with the settlement of a lawsuit brought against the Company by Koninklijke Philips Electronics N.V. and Philips Solid-State Lighting Solutions, Inc. (collectively, "Philips") on March 26, 2012, alleging that the Company's Array and certain other products infringe certain of Philips' patents for LED lighting. In September 2012, the Company entered into a settlement agreement ending the patent litigation brought by Philips. In connection with the settlement and patent license agreement, Philips granted the Company an ongoing, royalty-bearing license to the comprehensive portfolio of patented LED technologies and solutions offered under Philips' LED luminaire and retrofit bulb licensing program. The license allows Nexxus to continue the manufacture and sale of LED-based lighting products, including the Array® brand of LED replacement light bulbs. In September 2012, Nexxus paid Philips a one-time, lump-sum royalty fee to address past sales. In conjunction with the settlement and patent license agreement, on October 3, 2012, the parties filed a joint stipulation requesting dismissal of the lawsuit and on October 4, 2012 the action was dismissed without prejudice.

In addition, concurrent with closing the Investment by RVL 1 LLC, on September 25, 2012, the holders of \$2.4 million in aggregate principal amount of convertible promissory notes of the Company (the "Exchange Notes") exchanged the Exchange Notes (including \$140,667 of accrued interest) for a total of \$880,000 in cash (which payment was funded at closing from the proceeds of the Investment) and 1,000,000 newly-issued shares of the Company's Common Stock (the "Note Exchange"). The Note Exchange was consummated pursuant to the terms of a termination and exchange agreement (the "Termination and Exchange Agreement") entered into by the Company and the holders of the Exchange Notes on September 12, 2012, providing for the extinguishment of the approximately \$2.5 million of indebtedness associated with the Exchange Notes concurrent with and subject to the Investment.

### **Overview**

We design, manufacture, market and sell high performance, commercial grade, LED replacement light bulbs and LED-based signage, channel letter and contour lighting products. We sell these products under the Array Lighting and Lumificient brand names. With 46 issued patents and 28 combined U.S. and foreign patent applications pending related to our Array Lighting and Lumificient product offerings, our products incorporate many proprietary and innovative features. Our patented Selective Heat Sink (SHS) technology and patented designs provide opportunities for significant savings in energy and maintenance costs without compromising the environment. We generate revenue by selling products for use in the commercial, hospitality, institutional, retail and sign markets. We market and distribute products globally through multiple networks of independent sales representatives and distributors as well as through energy savings companies and national accounts. We began shipping our line of Array LED replacement lamps in December 2008 and continued the launch in 2009. In 2011, we expanded our sales of Array replacement lamps to the consumer market channel through a large home improvement retailer. In March 2011, the retailer began offering our Array lamps through its website. Beginning in June 2011, our Array lamps became available in approximately 1,100 of the retailer's stores. We expect that sales to this customer will not be significant in 2012 due to low consumer acceptance of our Array products at their current price points.

The initial Array product line included five lamp sizes or types with several options for color temperatures and light beams. Since its introduction we have continued to broaden the product line by adding additional lamp sizes and options, as well as upgrades to the original products. We have successfully certified a number of our Array lamps under the Energy Star program and expect to continue seeking certification of our Array lamps under the Energy Star program as new products are introduced. Four of our Array lamps were among the first lamps to be certified under the Energy Star program which began accepting applications for lamps in September 2010. In February 2012, our

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Array R30 lamps were the first LED reflector lamp replacements to earn the full 50,000 hour certification by Energy Star. This 50,000 hour life is equivalent to more than 10 years when the lamp is on for twelve hours per day. We intend to continue making investments to expand the Array product offering and grow our market share.

The Company's operations are principally managed on a product basis and are comprised of two reportable segments for financial purposes: LED replacement lamps and LED signage and lighting strips. The Array product line consists of white light LED replacement lamps. The Lumificient product line consists of LED signage and lighting strips. Throughout this report, we sometimes use "Array" to refer to our LED replacement lamps segment and "Lumificient" to refer to our LED signage and lighting strips segment.

On October 28, 2010, we sold substantially all of the assets of our legacy commercial/architectural lighting and pool and spa lighting businesses (the "Legacy Commercial and Pool Lighting Businesses"). Our Legacy Commercial and Pool Lighting Businesses consisted of the manufacture, marketing and sale of LED and fiber optic lighting products used for applications in commercial, architectural and pool and spa markets, excluding our Array business and the business of Lumificient. The divestiture of these businesses fits with our strategic plans to focus our resources on businesses where we see more significant long term growth potential. The results of operations of the Legacy Commercial and Pool Lighting Businesses have been reflected as discontinued operations for all periods presented.

### **Results of Operations**

*Revenue:* Revenue is derived from sales of our advanced lighting products. These products consist of solid-state LED replacement lamps, lighting systems and controls. Revenue is subject to both quarterly and annual fluctuations as a result of product mix considerations.

We sell our products pursuant to purchase orders and do not have any long-term contracts with our customers. We recognize revenue upon shipment to our customers. Delays in product orders or changes to the timing of shipments could cause our quarterly revenue to vary significantly. The majority of our sales are to the North American market (which includes Canada, but excludes Mexico for our purposes), and we expect that region to continue to be a major source of revenue for us. However, we also derive a portion of our revenue from customers outside of the North American market. All of our revenue is denominated in U.S. dollars.

*Cost of Goods Sold:* Our cost of goods sold consists primarily of raw materials, production costs from our contract manufacturers and manufacturing-related overhead such as depreciation, rent and utilities. In addition, our cost of goods sold includes provisions for excess and obsolete inventory reserves, freight and warranties. We manufacture our products based on sales projections and customer orders. We purchase materials and supplies to support such demand.

*Gross Profit:* Our gross profit has been and will continue to be affected by a variety of factors, including average sales prices of our products, product mix, our ability to reduce manufacturing costs and fluctuations in the cost of our purchased components. We define direct gross margin as revenue less direct material costs.

*Operating Expenses:* Operating expenses consist primarily of salaries and associated costs for employees in sales, engineering, finance, and administrative activities. In addition, operating expenses include charges relating to accounting, legal, insurance and stock-based compensation under the Financial Accounting Standards Board Accounting Standards Codification 718, "Compensation – Stock Compensation".

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### Three months ended September 30, 2012 vs. 2011

#### Revenue

|                 | (Unaudited)                 |                    |                     |             |
|-----------------|-----------------------------|--------------------|---------------------|-------------|
|                 | Quarter Ended September 30, |                    |                     |             |
|                 | 2012                        | 2011               | Change              | %           |
| Array LED lamps | \$ 117,519                  | \$1,155,697        | \$(1,038,178)       | -90%        |
| Lumificient     | 1,132,996                   | 957,306            | 175,690             | 18%         |
| Total revenue   | <u>\$1,250,515</u>          | <u>\$2,113,003</u> | <u>\$ (862,488)</u> | <u>-41%</u> |

Our operations faced significant challenges during the quarter. Our cash levels approached illiquidity and our business prospects were uncertain, particularly for the Array business. We implemented a number of measures to preserve cash, including the termination of all Array sales and marketing personnel. Prices for Array product were sharply reduced in an attempt to convert inventory to cash. During this same period, we operated our Lumificient business largely under normal conditions. On September 25, 2012, we closed the Investment from RVL 1 LLC, an affiliate of Aston Capital, LLC. As a result, we believe that our Company is poised to resume its sales growth and penetration into the LED lighting market.

Total revenue for the three months ended September 30, 2012 decreased 41%, or approximately \$862,000, to approximately \$1,251,000 as compared to approximately \$2,113,000 for the three months ended September 30, 2011. Sales of Lumificient products increased 18% from approximately \$957,000 in the third quarter of 2011 to approximately \$1,133,000 in the third quarter of 2012. This increase represents growth in Lumificient's national sign lighting business.

Sales of Array products decreased 90% from approximately \$1,156,000 in the third quarter of 2011 to approximately \$118,000 in the third quarter of 2012. Sales in the third quarter of 2011 primarily represented the initial shipments of our Array products to Lowe's distribution centers across the United States. These shipments were intended to meet the anticipated replenishment demand from the approximately 1,100 Lowe's stores that our company supplied in the second quarter of 2011. We expect that sales to this customer will not be significant in 2012 due to low consumer acceptance of our Array products at their current price points. In addition, as noted above, sales of our Array products in particular had been adversely affected by our deteriorating financial condition and business prospects.

#### Gross Profit

|                | (Unaudited)                 |                   |                    |             |
|----------------|-----------------------------|-------------------|--------------------|-------------|
|                | Quarter Ended September 30, |                   |                    |             |
|                | 2012                        | 2011              | Change             | %           |
| Revenue        | \$1,250,515                 | \$2,113,003       | \$(862,488)        | -41%        |
| Cost of sales  | 935,379                     | 1,456,946         | (521,567)          | -36%        |
| Gross profit   | <u>\$ 315,136</u>           | <u>\$ 656,057</u> | <u>\$(340,921)</u> | <u>-52%</u> |
| Gross margin % | 25%                         | 31%               |                    |             |

Gross profit for the three months ended September 30, 2012 was approximately \$315,000, or 25% of revenue, as compared to gross profit of approximately \$656,000, or 31% of revenue for the comparable period of 2011. Direct gross margin, which is revenue less material cost, decreased from 43% in the third quarter of 2011 to 38% in the third quarter of 2012. Our sales of Array products generated negative direct gross margins as we began liquidating surplus and discontinued inventory. In addition Lumificient's sales shifted toward a higher concentration of sales for national sign lighting programs where margins are more constricted.

In the third quarter of 2012, distribution costs, which include some light assembly costs, decreased to approximately \$155,000 from approximately \$257,000 in the third quarter of 2011. Distribution costs equated to 12% of sales for each of these periods. Lumificient's distribution costs increased slightly in the third quarter of 2012 compared to the same period in the prior year, while the distribution costs associated with Array declined for the same period.

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### Operating Loss and Expenses

|                                     | (Unaudited)                 |                     |                   |             |
|-------------------------------------|-----------------------------|---------------------|-------------------|-------------|
|                                     | Quarter Ended September 30, |                     |                   |             |
|                                     | 2012                        | 2011                | Change            | %           |
| Gross profit                        | \$ 315,136                  | \$ 656,057          | \$(340,921)       | -52%        |
| Less operating expenses:            |                             |                     |                   |             |
| Selling, general and administrative | 899,116                     | 1,432,920           | (533,804)         | -37%        |
| Research and development            | 125,924                     | 214,116             | (88,192)          | -41%        |
| Total operating expenses            | 1,025,040                   | 1,647,036           | (621,996)         | -38%        |
| Operating loss                      | <u>\$ (709,904)</u>         | <u>\$ (990,979)</u> | <u>\$ 281,075</u> | <u>-28%</u> |

Selling, general and administrative (SG&A) expenses were approximately \$899,000 for the quarter ended September 30, 2012 as compared to approximately \$1,433,000 for the same period in 2011, a decrease of approximately \$534,000, or 37%. Lumificient's SG&A expenses decreased by approximately \$14,000 in the third quarter of 2012 compared to the same period in 2011. In an effort to improve liquidity, we cut costs sharply in our corporate and Array businesses across almost all categories. In addition, we were able to negotiate lower payments on previous expenses with many of our vendors.

Research and development costs were approximately \$126,000 during the three months ended September 30, 2012, a decrease of approximately \$88,000, or 41%, compared to the same period in 2011. This decrease primarily reflects a decrease in compensation costs of approximately \$52,000.

### Non-operating Expense

In the third quarter of 2012, we recorded a gain on debt restructuring of approximately \$1,048,000 related to the extinguishment of debt in the Note Exchange concurrent with the Investment. The Exchange Notes had a principal value of \$2.4 million, plus accrued interest. The Exchange Notes were exchanged for a total of \$880,000 in cash and 1,000,000 million shares of our Common Stock.

### Income Taxes

We have provided a full valuation allowance against income tax benefits resulting from losses incurred and accumulated on operations. As a result, there was no provision for income tax recorded during the three months ended September 30, 2012 and 2011, respectively.

### Net Loss

Net income for the three months ended September 30, 2012 was approximately \$259,000. Net loss for the three months ended September 30, 2011 was approximately \$1,029,000, including income from discontinued operations related to our Legacy Commercial and Pool Lighting Businesses of approximately \$3,000. After including the effect of the accretion of the beneficial conversion feature for the Series B convertible preferred stock we issued to the Investor on September 25, 2012, net loss attributable to common stockholders was approximately \$4,936,000 and \$1,029,000 for the three months ended September 30, 2012 and 2011, respectively. Basic and diluted loss per common share attributable to common stockholders was \$0.30 and \$0.06 for the three months ended September 30, 2012 and 2011, respectively. Basic and diluted loss per common share from continuing operations attributable to common stockholders was \$0.30 and \$0.06 for the three months ended September 30, 2012 and 2011, respectively.

### **Nine months ended September 30, 2012 vs. 2011**

#### Revenue

|                 | (Unaudited)                     |                    |                      |             |
|-----------------|---------------------------------|--------------------|----------------------|-------------|
|                 | Nine Months Ended September 30, |                    |                      |             |
|                 | 2012                            | 2011               | Change               | %           |
| Array LED lamps | \$ 577,389                      | \$4,750,958        | \$(4,173,569)        | -88%        |
| Lumificient     | 2,874,678                       | 2,981,355          | (106,677)            | -4%         |
| Total revenue   | <u>\$3,452,067</u>              | <u>\$7,732,313</u> | <u>\$(4,280,246)</u> | <u>-55%</u> |

Total revenue for the nine months ended September 30, 2012 declined 55% to approximately \$3,452,000 as compared to the nine months ended September 30, 2011. Sales of Lumificient products decreased approximately \$107,000, or 4%, to approximately \$2,875,000 for the first nine months of 2012 compared to approximately

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\$2,981,000 for the same period of 2011. Lumificient grew its sales to several large national sign customers during the second and third quarters of 2012. This growth served to partially offset a drop in sales for non-sign lighting applications which the business gained in the first quarter of 2011 and did not replicate in 2012.

Sales of our Array LED lamps declined 88% to approximately \$577,000 for the first nine months of 2012 compared to approximately \$4,751,000 for the same period of 2011. The sales decrease of approximately \$4,174,000 reflects the growth in sales of Array products associated with the 2011 launch of Array products for sale through the consumer market channel. In the second quarter of 2011, we completed our initial shipments of Array products to approximately 1,100 Lowe's stores across the United States. In the third quarter of 2011, we initiated shipments to Lowe's distribution centers to meet anticipated replenishment demand from the Lowe's stores. We expect that sales to this customer will not be significant in 2012 due to low consumer acceptance of our Array products at their current price points. In addition, sales of our Array products in particular have been adversely affected by our deteriorating financial condition, business prospects and the associated actions taken by our Company.

### Gross Profit

|                     | (Unaudited)                     |                    |                      |              |
|---------------------|---------------------------------|--------------------|----------------------|--------------|
|                     | Nine Months Ended September 30, |                    |                      |              |
|                     | 2012                            | 2011               | Change               | %            |
| Revenue             | \$3,452,067                     | \$7,732,313        | \$(4,280,246)        | -55%         |
| Cost of sales       | 3,830,215                       | 5,582,692          | (1,752,477)          | -31%         |
| Gross (loss) profit | <u>\$ (378,148)</u>             | <u>\$2,149,621</u> | <u>\$(2,527,769)</u> | <u>-118%</u> |
| Gross margin %      | -11%                            | 28%                |                      |              |

Negative gross profit for the nine months ended September 30, 2012 was approximately \$378,000, or -11% of revenue, as compared to gross profit of approximately \$2,150,000, or 28% of revenue for the comparable period of 2011. Direct gross margin, which is revenue less material cost, remained flat at 40% for both periods. Array direct gross margins declined due to market price pressures and our inventory liquidation efforts. Lumificient experienced a decline in direct gross margins due to the growth in national sign lighting programs where pricing is more competitive. These declines however were offset by the shift in sales mix from Array products to Lumificient's products, resulting in our direct gross margin remaining flat.

Distribution costs, which include some light assembly costs, for the first nine months of 2012 increased approximately \$830,000 to approximately \$1,769,000 as compared to approximately \$939,000 for the same period of 2011. The increase in distribution costs includes approximately \$1,184,000 more expense for inventory adjustments recorded through September 30, 2012 compared to the same period in 2011. As a result of deteriorating market conditions, aggressive pricing by our competitors and our inventory liquidation efforts, we recorded a write down of Array inventory to allow us to price our Array products accordingly. We are reviewing our sourcing strategy and may decide to discontinue certain products. Offsetting these higher inventory adjustments for the first nine months of 2012, freight expense decreased by approximately \$232,000 on the lower sales volume and depreciation declined by approximately \$85,000, compared to the same period in 2011. In addition, distribution costs for Lumificient remained flat through the first nine months of 2012 compared to the same period of 2011.

### Operating Loss and Expenses

|                                     | (Unaudited)                     |                      |                      |             |
|-------------------------------------|---------------------------------|----------------------|----------------------|-------------|
|                                     | Nine Months Ended September 30, |                      |                      |             |
|                                     | 2012                            | 2011                 | Change               | %           |
| Gross (loss) profit                 | \$ (378,148)                    | \$ 2,149,621         | \$(2,527,769)        | -118%       |
| Less operating expenses:            |                                 |                      |                      |             |
| Selling, general and administrative | 3,854,782                       | 4,654,095            | (799,313)            | -17%        |
| Research and development            | 448,920                         | 631,799              | (182,879)            | -29%        |
| Impairment charge                   | <u>3,397,212</u>                | <u>—</u>             | <u>3,397,212</u>     | <u>N/A</u>  |
| Total operating expenses            | <u>7,700,914</u>                | <u>5,285,894</u>     | <u>2,415,020</u>     | <u>46%</u>  |
| Operating loss                      | <u>\$(8,079,062)</u>            | <u>\$(3,136,273)</u> | <u>\$(4,942,789)</u> | <u>158%</u> |

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Selling, general and administrative (SG&A) expenses were approximately \$3,855,000 for the nine months ended September 30, 2012 as compared to approximately \$4,654,000 for the same period in 2011, a decrease of approximately \$799,000, or -17%. For the nine months ended September 30, 2012, employee compensation expense in our corporate and Array business units decreased by approximately \$504,000 while travel-related costs across these business units decreased by approximately \$60,000 as compared to the same period in 2011. Commission expense declined by approximately \$64,000 on the lower Array sales for the nine months ended September 30, 2012 as compared to the same period in 2011. The expiration of our lease in Orlando reduced facility expense by approximately \$81,000 for the nine months ended September 30, 2012 as compared to the same period in 2011. Noncash stock compensation expense decreased by approximately \$247,000 for the nine months ended September 30, 2012 compared to the same period in 2011.

These expense reductions were offset by higher expense of approximately \$265,000 to resolve patent infringement litigation and other potential claims for the nine months ending September 30, 2012 compared to the same period in 2011.

Research and development costs were approximately \$449,000 during the nine months ended September 30, 2012 as compared to approximately \$632,000 during the same period in 2011. This decrease of approximately \$183,000 was primarily due to lower costs in our corporate engineering department, including lower employee compensation expense of approximately \$129,000 and lower project-related costs of approximately \$54,000.

In the second quarter of 2012, we recorded an impairment charge for our Array segment of approximately \$3,378,000 and an impairment charge for our corporate trademarks of approximately \$19,000. These charges include approximately \$1,989,000 for goodwill impairment, approximately \$1,015,000 for impairment of other intangible assets and approximately \$393,000 for impairment of property and equipment.

### Non-operating Expense

In the third quarter of 2012, we recorded a gain on debt restructuring of approximately \$1,048,000 related to our extinguishment of debt concurrent with the Investment. The Exchange Notes had a principal value of \$2.4 million, plus accrued interest. The Exchange Notes were exchanged for a total of \$880,000 in cash and 1,000,000 million shares of our Common Stock.

### Income Taxes

We have provided a full valuation allowance against income tax benefits resulting from losses incurred and accumulated on operations. As a result, there was no provision for income tax recorded during the nine months ended September 30, 2012 and 2011, respectively.

### Net Loss

Net loss for the nine months ended September 30, 2012 and 2011 was approximately \$7,240,000 and \$3,226,000, respectively, including income from discontinued operations related to the Legacy Commercial and Pool Lighting Businesses of approximately \$1,000 in 2012 and \$7,000 in 2011. After including the effect of the accretion of the beneficial conversion feature for the Series B convertible preferred stock that we issued to the Investor on September 25, 2012, net loss attributable to common stockholders was approximately \$12,435,000 and \$3,226,000 for the nine months ended September 30, 2012 and 2011, respectively. Basic and diluted loss per common share attributable to common stockholders was \$0.75 and \$0.20 for the nine months ended September 30, 2012 and 2011, respectively. Basic and diluted loss per common share from continuing operations attributable to common stockholders was \$0.75 and \$0.20 for the nine months ended September 30, 2012 and 2011, respectively.

### **Liquidity and Capital Resources**

At September 30, 2012, we had cash and cash equivalents of approximately \$4,298,000, compared to cash and cash equivalents of approximately \$3,015,000 at December 31, 2011. We had working capital at September 30, 2012 and 2011 of approximately \$5,326,000.

Net cash used in operating activities increased approximately \$623,000 to approximately \$2,937,000 for the nine months ended September 30, 2012, as compared to approximately \$2,314,000 for the nine months ended September 30, 2011. Net loss adjusted for non-cash items for the nine months ended September 30, 2012 increased by approximately \$1,396,000, as compared to the same period in 2011. Cash generated from operating assets and liabilities increased to \$686,000 for the nine months ended September 30, 2012 compared to cash used for operating assets and liabilities of approximately \$87,000 for the same period in 2011.

Net cash used in investing activities for the nine months ended September 30, 2012 was approximately \$95,000 as compared to net cash provided by investing activities of approximately \$767,000 in the same period of 2011. Cash provided by investing activities for the nine months ended September 30, 2011 is primarily the result of the

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collection of the approximately \$1,110,000 note receivable related to the sale of our Legacy Commercial and Pool Lighting Businesses. Cash used for the purchase of property and equipment, net of proceeds from the disposal of fixed assets, decreased by approximately \$197,000 for the nine months ended September 30, 2012, as compared to the same period in 2011, and cash used for patents, trademarks and other intangible asset costs in the nine months ended September 30, 2012 decreased by approximately \$51,000 compared to the same period in 2011.

Net cash provided by financing activities increased by approximately \$3,995,000 for the nine months ended September 30, 2012 as compared to the same period in 2011. This increase primarily was the result of the Investment by RVL 1 LLC offset by the exchange and termination of the Company's convertible promissory notes. For the nine months ending September 30, 2011, the Company also received approximately \$320,000 in net proceeds from the exercise of employee stock options and warrants.

As our financial condition deteriorated during the last several months, it became necessary for us to accelerate our cash conservation measures, including delaying or withholding payments to vendors and terminating employees. Some of our suppliers and service providers had stopped doing business with us, some had threatened collection actions and others were expected to do likewise unless funding was obtained. In conjunction with the Investment by RVL 1 LLC, certain of our vendors and service providers agreed to accept payments less than the outstanding balance owed to them. As a result of the Investment and subsequent payments to our suppliers and service providers, we believe we have successfully restored our relationship and credit with our primary vendors.

Our liquidity is affected by many factors. Some of these factors are based on operations of the business and others relate to the uncertainties of national and global economies and the lighting industry. Any disruption of the capital markets or decline in economic conditions could negatively impact our ability to achieve profitability or raise additional capital when needed. Our ability to maintain adequate liquidity and achieve long-term viability is dependent upon successfully managing our costs and expenses and increasing revenue. There can be no assurance that we will be able to maintain adequate liquidity or achieve long-term viability. We face significant challenges in order to achieve profitability and there can be no assurance that we will achieve or sustain positive cash flows from operations or profitability. Our ability to meet our obligations in the ordinary course of business is dependent upon our ability to establish profitable operations or raise additional capital through public or private debt or equity financing, or other sources of financing to fund operations. There can be no assurance such financing will be available on terms acceptable to us, if at all, or that any financing transaction will not be dilutive to our current stockholders. We believe that our existing cash balance, combined with working capital, will be sufficient to enable us to meet our planned operating expenses through the next twelve months.

If we decide to accelerate the growth of our operations in response to new market opportunities or to acquire other technologies or businesses, or if our revenue grows more slowly than we anticipate or we incur unexpected costs, we will need to raise additional capital. Additional capital may come from several sources, including proceeds from the exercise of outstanding options and warrants, the incurrence of indebtedness or the issuance of additional common stock, preferred stock, debt (whether convertible or not) or other securities. Increased indebtedness could negatively affect our liquidity and operating flexibility. The issuance of any additional securities could, among other things, result in substantial dilution of the percentage ownership of our stockholders at the time of issuance, result in substantial dilution of our earnings per share, and adversely affect the prevailing market price for our common stock. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If additional funds become necessary and are not available on terms favorable to us, or at all, we may be unable to expand our business or pursue an acquisition and our business, results of operations and financial condition may be materially adversely affected.

### **Contractual Obligations**

On September 12, 2012, we entered into the Investment Agreement described above under the caption "Recent Events." The transactions contemplated by the Investment Agreement closed on September 25, 2012. In addition, concurrent with the closing of the Investment, we consummated the Note Exchange described under the caption "Recent Events." As of September 30, 2012, there have been no other material changes to our contractual obligations disclosed in the Management's Discussion and Analysis section of our Annual Report on Form 10-K for the year ended December 31, 2011.

### **Critical Accounting Policies**

As of September 30, 2012, there have been no material changes to our critical accounting policies disclosed in the Management's Discussion and Analysis section of our Annual Report on Form 10-K for the year ended December 31, 2011.

### **Critical Accounting Estimates**

Management's discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, we evaluate our estimates, including those related to revenue recognition, income taxes, intangibles, accounts receivable, inventory, stock-based compensation and warranty obligations. Management bases its 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 may differ from these estimates under different assumptions or conditions.

The critical accounting estimates are those that we believe are the more significant judgments and estimates used in the preparation of our financial statements. As of September 30, 2012, there have been no material changes to the critical accounting estimates as described in our Management's Discussion and Analysis of Financial Condition and Results of Operations and in the Notes to the financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2011.

### **Recent Accounting Pronouncements**

See Note 1 to the consolidated financial statements in Part 1 of this Quarterly Report on Form 10-Q for information related to new accounting pronouncements.

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### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK**

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act 1934, as amended, and are not required to provide the information under this item.

### **ITEM 4. CONTROLS AND PROCEDURES**

We maintain disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) that are designed to provide reasonable assurance that information required to be disclosed by us in our reports filed or submitted under the Exchange Act is processed, recorded, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

As required by SEC Rule 13a-15(b), our company carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of its disclosure controls and procedures as of the end of the period covered by this Quarterly Report. Based on this evaluation, management concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

There were no changes in our internal control over financial reporting that occurred during the three month period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II**

### Item 1. Legal Proceedings

In the ordinary course of business we may become a party to various legal proceedings involving collection actions, contractual matters, infringement actions, product liability claims and other matters.

On March 26, 2012, Koninklijke Philips Electronics N.V. and Philips Solid-State Lighting Solutions, Inc. (collectively, “Philips”) filed a lawsuit (civil action no. 12-cv-10549) in the United States District Court for the District of Massachusetts against the Company alleging that the Company’s Array and certain other products infringe certain of Philips’ patents for LED lighting. In September 2012, the Company entered into a settlement agreement ending the patent litigation brought by Philips. In connection with the settlement and patent license agreement, Philips granted the Company an ongoing, royalty-bearing license to the comprehensive portfolio of patented LED technologies and solutions offered under Philips’ LED luminaire and retrofit bulb licensing program. The license allows Nexxus to continue the manufacture and sale of LED-based lighting products, including the Array® brand of LED replacement light bulbs. In September 2012, Nexxus paid Philips a one-time, lump-sum royalty fee to address past sales. In conjunction with the settlement and patent license agreement, on October 3, 2012, the parties filed a joint stipulation requesting dismissal of the lawsuit and on October 4, 2012 the action was dismissed without prejudice.

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### Item 6. Exhibits

#### (a) Exhibits.

| <u>Exhibit<br/>Number</u> | <u>Document Description</u>   |
|---------------------------|---|
| 3.1                       | Certificate of Designations, Preferences and Rights of the Series B Convertible Preferred Stock of Nexxus Lighting, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on September 26, 2012)  |
| 10.1*#                    | Settlement and Patent License Agreement dated as of August 1, 2012 between Koninklijke Philips Electronics N.V. and the Company   |
| 10.2                      | Investment Agreement dated September 12, 2012 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on September 17, 2012)  |
| 10.3                      | Exchange Agreement dated September 12, 2012 (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on September 17, 2012)  |
| 10.4                      | Registration Rights Agreement dated September 25, 2012 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, as filed with the Securities and Exchange Commission on September 26, 2012)   |
| 31.1*                     | Certifications of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002   |
| 31.2*                     | Certifications of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002   |
| 32.1*                     | Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002   |
| 101**                     | The following financial statements from Nexxus Lighting, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2012, filed on November 14, 2012, formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations (iii) Consolidated Statements of Stockholders' Equity (iv) Consolidated Statements of Cash Flows, (v) Notes to Consolidated Financial Statements. |

\* Filed herewith

\*\* Submitted electronically with this Report pursuant to Rule 405 of Regulation S-T

# Application has been made to the Securities and Exchange Commission for confidential treatment of certain provisions. Omitted provisions for which confidential treatment has been requested have been filed separately with the Securities and Exchange Commission.

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

**NEXXUS LIGHTING, INC.**

By: /s/ Michael A. Bauer

Date: November 14, 2012

Michael A. Bauer, Chief Executive Officer  
(Principal Executive Officer)

By: /s/ Gary R. Langford

Date: November 14, 2012

Gary R. Langford, Chief Financial Officer  
(Principal Financial and Accounting Officer)

**CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR PORTIONS OF THIS EXHIBIT. THE COPY FILED HEREWITH OMITTS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST. OMISSIONS ARE DESIGNATED AS [XXXX]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

CONFIDENTIAL

**SETTLEMENT AND PATENT LICENSE AGREEMENT**

This settlement and patent license agreement, dated as of the 1st day of August 2012, is entered into between:

**KONINKLIJKE PHILIPS ELECTRONICS N.V.**, having its registered office in Eindhoven, The Netherlands (“Philips”)

and

**NEXXUS LIGHTING, INC.**, having its registered office in Charlotte, North Carolina, U.S.A. (“Licensee”)

Philips and Licensee hereinafter also referred to individually as “a Party” and collectively as “the Parties”.

WHEREAS, Philips is in the business of making and selling LED-based luminaires and retrofit bulbs and has developed and acquired valuable technology and intellectual property rights for the control of such devices;

WHEREAS, Licensee is also in the business of selling LED-based luminaires and retrofit bulbs and wishes to obtain a license under certain Philips’ patents for LED-based luminaires and retrofit bulbs, and Philips is willing to grant such license on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, the Parties hereby agree as follows:

**DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings ascribed thereto below:

“**Affiliate(s)**” shall mean any one or more legal entities (i) directly or indirectly owned or controlled by Philips or Licensee, (ii) directly or indirectly owning or controlling Licensee, or (iii) directly or indirectly owned or controlled by the legal entity owning or controlling Licensee, but any such legal entity shall only be considered an Affiliate of Licensee for as long as such direct or indirect ownership or control exists. For the purposes of this

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CONFIDENTIAL

definition a legal entity shall be deemed to own and/or to control another legal entity if more than 50% (fifty percent) of the voting stock of the latter legal entity, ordinarily entitled to vote in the meetings of shareholders of that entity, (or, if there is no such stock, more than 50% (fifty percent) of the ownership of or control in the latter legal entity) is held directly or indirectly by the owning and/or controlling legal entity.

“**Agreement**” shall mean this patent license agreement, including the following Annexes:

- Annex A – Patent List;
- Annex B – Audit Guidelines;
- Annex C – Qualified Supplier List; and
- Annex D – List of trademarks of Licensee and its Affiliates.

“**Disqualifying Audit**” shall mean the occurrence of any of the following:

- (i) 3 reports of audits in accordance with Clause 4.1 and/or Clause 4.3 revealing that Licensee has underpaid the amount due for any royalty reporting period by more than [XXXX]% ([XXXX] percent) of the total amount due for such period, or
- (ii) 1 report of an audit in accordance with Clause 4.1 and/or Clause 4.3 revealing that Licensee has underpaid the amount due for any period by more than [XXXX]% ([XXXX]percent) of the total amount due for such period.

“**Effective Date**” shall mean the date first written above.

“**Exempt Product**” shall mean an LED-based luminaire (i.e., a Product other than a Retrofit Bulb) that meets all of the following conditions:

- (i) all LED light engine modules (i.e., LEDs placed on one or more common circuit boards) comprised in the LED-based luminaire are Qualified Components;
- (ii) all LED drivers comprised in the LED-based luminaire are Qualified Components;
- (iii) all components, if any, for controlling the light output of the LEDs comprised in the LED-based luminaire are Qualified Components;

and the trademark of the respective Qualified Supplier is identifiable on each Qualified Component in the LED-based luminaire.

“**Field**” shall mean [XXXX].

“**Lawsuit**” shall mean the cause of action styled as *Koninklijke Philips Electronics N.V. and Philips Solid-State Lighting Solutions, Inc. v. Nexus Lighting, Inc.*, 12-cv-10549 in the United States District Court for the District of Massachusetts.

“**Licensed Product**” shall mean a Product: (i) [XXXX], (ii) [XXXX], and (iii) [XXXX].

“**Net Revenue**” shall mean [XXXX].

“**Patents**” shall mean the patents and patent applications listed in Annex A, including any future divisionals, re-issues, re-examinations, continuations and continuations-in-part thereof.

“**Product**” shall mean an individual and discrete LED-based luminaire, including but not limited to a fixture, and an individual and discrete Retrofit Bulb that has, either on the luminaire or Retrofit Bulb itself or on its packaging, a trade mark (e.g., product name) that is owned or exclusively used by Licensee and/or its Affiliates as set forth in Annex D. [XXXX].

“**Qualified Component**” shall mean an LED light engine module (i.e., LEDs placed on one or more common circuit boards), an LED driver or any other component or device for controlling the light output of an LED (individually, a “Component”), that is sourced directly or indirectly from a Qualified Supplier, that has the trademark (e.g., company name or product brand name) of the respective Qualified Supplier identified on such Component.

“**Qualified Supplier**” shall mean a company that is listed in Annex C.

“**Reporting Form**” shall mean a statement that satisfies the requirements of Clause 3.4.

“**Retrofit Bulb**” shall mean a socket-based, LED-based light source, including but not limited to a bulb or a tube, that

- (i) contains all LED driver circuitry required to drive the LEDs,
- (ii) has a form-factor which is substantially similar to a conventional, non-LED light source,
- (iii) is intended to be operated in a previously-installed and operated conventional (e.g. incandescent, fluorescent, halogen) luminaire (fixture), and
- (iv) is meant to replace a non-LED light source which was previously installed in such a conventional luminaire.

Accordingly, and for the avoidance of doubt, an LED-based light source which is to be operated in a newly-installed luminaire shall not be a Retrofit Bulb. Notwithstanding the above, an LED-based light source capable of communicating, either directly or indirectly, with a device outside thereof shall not be treated as a Retrofit Bulb under this Agreement.

“**Royalty-Bearing Products**” shall mean all individual, discrete Products with the exception of Exempt Products.

“**Royalty Rate**” shall mean [XXXX]% [XXXX], [XXXX]

## 1 – SETTLEMENT OF PENDING LITIGATION

1.1 Within ten (10) days of this Agreement being fully executed, the Parties shall jointly file a Stipulation of Dismissal, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), with the United States District Court for the District of Massachusetts, dismissing their respective claims against each other in connection with the Lawsuit. [XXXX].

1.2 [XXXX].

## 2 – GRANT OF RIGHTS

- 2.1 For the term of this Agreement and subject to its provisions, Philips hereby grants to Licensee and its Affiliates a world-wide, non-exclusive, non-transferable, indivisible and royalty-bearing license, without the right to grant sub-licenses, under the issued Patents solely for the account of Licensee and/or its Affiliates to make, have made, offer for sale, use and sell Products intended and/or marketed for use within the Field.

For the avoidance of doubt, no license shall be granted under this Agreement for Products manufactured by a third party, which are sold to Licensee and/or any of its Affiliates, but subsequently sold back to that third party or any Affiliates of that third party, and for Products not carrying a trademark (e.g., brand name) of Licensee and/or any of its Affiliates as set forth in Annex D.

- 2.2 Philips shall not assert any of the Patents against any system comprising Licensed Products provided that (i) the system is only marketed and used within the Field, and (ii) the system does not comprise any Product other than a Licensed Product, which Product would require a license under any of the issued Patents.
- 2.3 Subject to the receipt of the one-time, lump sum payment specified in Clause 3.1, Philips hereby releases, acquits and forever discharges Licensee, its Affiliates, as well as its customers and distributors from any claims of infringement of the Patents arising from the manufacture or sale of Products by Licensee and/or its Affiliates prior to the Effective Date, which if taken place after the Effective Date would have been licensed under this Agreement. The release and license set forth above are personal and non-transferable and not intended as, and are not a grant of, any rights under the Patents to any third party not expressly covered by this Agreement. This release does not apply to sales of any products of a company or entity acquired by Licensee and/or its Affiliates after the Effective Date.

## 3 – ROYALTIES, REPORTS AND PAYMENT

- 3.1 Within thirty (30) days of the execution of this Agreement, Licensee shall make a non-refundable, non-recoupable one-time lump-sum payment of \$[XXXX] to Philips.

In consideration of the rights and licenses granted hereunder by Philips to Licensee and its Affiliates, Licensee shall pay to Philips a royalty in accordance with the provisions of Clause 3.8.

3.2 All payments by Licensee to Philips hereunder shall be made in US Dollars to Philips' US Dollar bank account with [XXXX] under the following references:

|                             |   |
|-----------------------------|---|
| US-Dollar bank account no.: | [XXXX]  |
| Name:                       | Koninklijke Philips Electronics N.V. – Licenses |
| Bank:                       | [XXXX]  |
| Swiftcode:                  | [XXXX]  |
| ABAcode:                    | [XXXX]  |
| Ref:                        | [XXXX]  |

Any payment or sales value in the Reporting Form under this Agreement in a currency other than US Dollars shall be converted to US Dollar. The rate of exchange for converting such currency shall be the European Central Bank fixing rate of the relevant currency as officially quoted by the European Central Bank for payment of currency transactions on the day that the amount is due and payable.

3.3 Within 30 days following 31 March, 30 June, 30 September and 31 December of each calendar year during the term of this Agreement, Licensee shall (even in the event that null Net Revenue has to be reported) submit to Philips, by means Philips may direct, as default a Reporting Form certified by an authorized representative of Licensee.

3.4 [XXXX]:

- (i) [XXXX]; and
- (ii) [XXXX].

Philips shall maintain all information included in the Reporting Forms and provided under this Clause 3.4 as confidential information in accordance with the provisions of Clause 5.

3.5 The royalty payable to Philips hereunder for a given quarterly period shall be calculated as follows: [XXXX].

The Royalty-Bearing Products, as defined, shall include all Products regardless of where such Products are made or sold and regardless of whether such Products may practice any of the inventions that are claimed in an issued patents contained within the Patents, but shall not include Exempt Products.

[XXXX]

The Royalty Rate shall be [XXXX]% [XXXX], [XXXX].

[XXXX]

3.6 [XXXX]

3.7 Licensee acknowledges and agrees that the Annex C may be updated by Philips from time to time to reflect changes in the status of the Qualified Suppliers, effective as per Licensee's notification. As far as reasonably required by Philips to verify Qualified Suppliers' supply of Qualified Components to Licensee, Licensee herewith waives any confidentiality obligation it may have imposed on its Qualified Suppliers that could prevent such verification.

- 3.8 Without prejudice to Licensee's obligation to promptly make up for any underpayment, royalties shall be due at the same time Reporting Forms are due as set forth in Clause 3.3 and Licensee shall pay all royalties due as calculated in accordance with Clause 3.5 and reported in the Reporting Form to Philips according to Clauses 3.3 and 3.4. Any payment under this Agreement that is not made on or before the date(s) specified herein, shall accrue interest at the rate of [XXXX]% ([XXXX] percent) per month (or part thereof), or the maximum amount permitted by law, whichever is lower, without any notification being required. In no event shall Licensee have the right to set off any payments due hereunder against any claim, of whatever nature, that it or any of its Affiliates may have against Philips or any of its Affiliates. Any excess payment amount shall be credited to immediate subsequent payment obligations and not be refunded by Philips.
- 3.9 All costs, stamp duties, taxes and other similar levies arising from or in connection with the conclusion of this Agreement shall be borne by Licensee. In the event that the governmental authorities of any country impose any withholding tax on payments made by Licensee to Philips hereunder and requires Licensee to withhold such tax from such payments, Licensee may deduct such tax from such payments. In such event, Licensee shall promptly provide Philips with tax receipts issued by the relevant tax authorities.
- 3.10 **Change of Control:** In the event of (a) any consolidation or merger of Licensee with or into any other entity in which the holders of Licensee's outstanding shares immediately before such consolidation or merger do not, but immediately after such consolidation or merger, do retain stock, representing a majority of the voting power of the surviving entity or stock representing a majority of the voting power of an entity that wholly owns, directly or indirectly, the surviving entity; (b) the sale, transfer or assignment of securities of Licensee representing a majority of the voting power of all of Licensee's outstanding voting securities to an acquiring party or group; or (c) the sale of all or substantially all of Licensee's assets, Licensee shall notify Philips immediately and Philips shall have the right to request in writing a re-negotiation of the Royalty Rate. If such renegotiation is not successful within 6 months of the request, Philips may terminate the Agreement. In the event that one or more employees of Licensee or its Affiliates acquire more than 50% (fifty percent) of the voting stock of Licensee, ordinarily entitled to vote in the meetings of shareholders of Licensee (i.e. a management buy-out), and provided that Licensee does not become directly or indirectly owned or controlled by another legal entity (other than said employees), Philips shall have no right to request a re-negotiation of the Royalty Rate. [XXXX]

#### 4 – AUDITING

- 4.1 [XXXX]
- 4.2 [XXXX]
- 4.3 [XXXX]

**5 – CONFIDENTIALITY**

- 5.1 For a period of 5 years from the first date of disclosure, Philips shall use any information obtained from Licensee in accordance with this Agreement and designated “confidential” only for the following purposes:
- (a) to verify the accuracy of information provided in Reporting Forms submitted by Licensee;
  - (b) to ensure compliance with any royalty or other payment obligation;
  - (c) to confirm the license status of any Product;
  - (d) to disclose the information to an auditor for any purpose indicated in this Agreement;
  - (e) to enforce Philips’ rights under this Agreement or other related agreements.
- 5.2 Philips shall not disclose any such confidential information to any employee other than those engaged in Philips’ licensing programs or to any third party, provided that the foregoing shall not prevent Philips from disclosing such information pursuant to an order of a competent court or administrative authority.
- 5.3 The contents, but not the mere existence of this Agreement are and shall be kept confidential by the Parties and their Affiliates. Philips shall be permitted to list the Licensee on a Philips website identifying the Licensee as having obtained a license under the Philips SSL Luminaire and Retrofit Bulb License Program. [XXXX]
- 5.4 No confidentiality obligation shall apply to the extent information so acquired:
- (i) was known to the receiving Party or its Affiliates prior to the date on which such information was acquired from the disclosing Party or its Affiliates;
  - (ii) is or has become available to the public through no default of the receiving Party or its Affiliates;
  - (iii) was or is received from a third party who was under no confidentiality obligation in respect of such information;
  - (iv) must be disclosed pursuant to an order of a competent court or administrative authority or pursuant to any mandatory law.

**6 – NO WARRANTY AND INDEMNIFICATION**

- 6.1 Licensee acknowledges that third parties may own intellectual property rights relevant to the Products other than the Patents licensed to Licensee hereunder. Philips makes no warranty whatsoever that the manufacture, sale or other disposal of Products or the use of information supplied by Philips hereunder, does not infringe or will not cause infringement of any intellectual property rights other than the Patents.

- 6.2 Licensee acknowledges that Philips may own intellectual property rights other than the Patents licensed to Licensee hereunder that may be relevant to other aspects than the control of the LEDs in the Products (such as, but not limited to the esthetic appearance of the Products). Philips makes no warranty whatsoever that the manufacture, sale or other disposal of Products or the use of information supplied by Philips hereunder, does not infringe or will not cause infringement of any intellectual property rights referred to in the previous sentence.
- 6.3 Licensee shall defend, indemnify and hold Philips and its Affiliates harmless from and against any and all third party claims in connection with Products manufactured, sold or otherwise disposed of by Licensee and/or its Affiliates.

## 7 – TERM AND TERMINATION

- 7.1 This Agreement shall enter into force on the Effective Date and shall remain in force until the expiration of the last to expire patent included in the Patents, unless terminated earlier in accordance with its provisions.
- 7.2 Without prejudice to the provisions of Clauses 7.3, 7.4 and 7.5, each Party may terminate this Agreement at any time by means of a written notice to the other Party in the event that the other Party fails to perform any obligation under this Agreement and such failure is not remedied within 30 days after receipt of a notice specifying the nature of such failure and requiring it to be remedied. Such right of termination shall not be exclusive of any other right or remedy to which the non-breaching Party may be entitled and all such remedies shall be cumulative.
- 7.3 Philips shall be entitled to terminate this Agreement effective immediately upon a Disqualifying Audit.
- 7.4 [XXXX]
- 7.5 Philips may terminate this Agreement forthwith by means of a written notice to Licensee in the event that a creditor or other claimant takes possession of, or a receiver, administrator or similar officer is appointed over any of the assets of Licensee, or in the event that Licensee makes any voluntary arrangement with its creditors or becomes subject to any court or administration order pursuant to any bankruptcy or insolvency law.
- 7.6 Upon the termination of this Agreement by Philips for any reason pursuant to this Clause 7, Licensee and its Affiliates shall immediately cease the manufacture and/or sale of Product infringing any Patent.
- 7.7 All provisions of this Agreement intended to survive (whether express or implied) the expiry or termination of this Agreement shall so survive. Expiration or termination of the Agreement shall not relieve the Parties of their obligations accrued prior to such expiration or termination, and all rights and obligations of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled and shall apply to and be binding upon the Parties' respective successors and permitted assignees.

For the avoidance of doubt and without any limitation, the following provisions of this Agreement shall survive expiration or termination of this Agreement:

- a) The obligation of Licensee to pay all royalties accrued as of the Effective Date up to the date of expiration or termination of this Agreement, including any interest on overdue royalties, if any;
- b) The provisions of Clauses 3 and 4 of this Agreement;
- c) The obligation of the Parties and their Affiliates to maintain information in confidence regarding the terms of this Agreement and the performance of the Parties under this Agreement;
- d) Any cause of action or claim of Philips accrued or to accrue because of any breach or default by Licensee.

## 8 – MISCELLANEOUS

8.1 Notice: Any notice other than the Reporting Forms by either Party under this Agreement shall be given in writing and signed by an authorized representative of the notifying Party by means of a letter, facsimile or electronic mail directed:

If to Philips:           Koninklijke Philips Electronics N.V.  
                                  c/o Philips Intellectual Property & Standards  
                                  Building HTC-44  
                                  P.O. Box 220  
                                  5600 AE Eindhoven  
                                  The Netherlands  
                                  Fax +31 40 274 34 89  
                                  Email: [XXXX]  
                                  Attention: [XXXX]

If to Licensee:         Nexus Lighting, Inc.  
                                  124 Floyd Smith Drive, Suite 300  
                                  F.a.o. Michael Bauer, CEO  
                                  Fax (704) 405-0422  
                                  E-mail: mbauer@nexuslighting.com

8.2 Nothing in this Agreement shall be construed as:

- (a) imposing on either Party any obligation to instigate any suit or action for infringement of any of the Patents or to defend any suit or action brought by a third party challenging the validity of any such Patents. Licensee and its Affiliates shall have no right to instigate any such suit or action for infringement of any of the Patents or to defend any such suit or action challenging the validity of any such Patents;
- (b) imposing any obligation to file any patent application or to secure any patent or to maintain any patent in force;
- (c) conferring any license or right to copy or imitate the appearance and/or design of any product of Philips or its Affiliates;

- (d) conferring any license or other rights to manufacture, sell or otherwise dispose of any product or device other than a Licensed Product. In particular, this Agreement does not confer any license to modules, components or subassemblies for LED-based luminaires or Retrofit Bulbs;
  - (e) a warranty or representation by Philips as to the validity or scope of any Patent;
  - (f) a warranty or representation that any Product is, or will be, free from infringement of patents other than the Patents or other intellectual property rights of Philips or third parties,;
  - (g) unless otherwise provided in this Agreement, an obligation to provide any manufacturing or technical information, or any information concerning pending patent applications;
  - (h) granting by implication, estoppel, or otherwise any licenses or rights under any patent or patent application other than the Patents;
  - (i) conferring a right to use in advertising, publicity or otherwise, any trademark or trade name of Philips or its Affiliates, [XXXX].
- 8.3 Free to Prosecute and Abandon: Licensee acknowledges and agrees that Philips is entitled to abandon and apply for amendments to any Patent. Licensee consents to such abandonment or amendment as Philips or its Affiliates may undertake or apply for in the future.
- 8.4 Integration: The Agreement sets forth the entire understanding between the Parties and supersedes and replaces all prior understanding and agreements between the Parties as to the subject matter hereof. No variation of this Agreement shall be binding upon either Party, unless made in writing and signed by an authorized representative of each of the Parties.
- 8.5 Export Laws and Regulations: Licensee hereby acknowledges that the rights and obligations of the Agreement may be subject to the laws and regulations relating to the export of Products. Without limitation, Licensee shall comply with all such laws and regulations. Licensee shall indemnify Philips against any claim or damages resulting from Licensee's conduct in contravention of the aforementioned export control laws and regulations.
- 8.6 No Waiver: Neither the failure nor the delay of either Party to enforce any provision of this Agreement shall constitute a waiver of such provision or of the right of either Party to enforce each and every provision of this Agreement.
- 8.7 Severability: Should any provision of this Agreement be finally determined void or unenforceable in any judicial proceeding, such determination shall not affect the operation of the remaining provisions hereof, provided that, in such event, each Party shall have the right to terminate this Agreement by means of a written notice to the other Party.
- 8.8 Assignment: This Agreement shall inure to the benefit of and be binding upon each of the Parties. Any assignment of this Agreement in whole or in part by Licensee requires the prior written consent of Philips, [XXXX]. Any such assignment shall be done by means of a written instrument, signed by a duly authorized representative of each Party.

8.9 Venue and Choice of Law: This Agreement shall be governed by and construed in accordance with laws of the State of New York. Any dispute between the Parties in connection with this Agreement (including any question regarding its existence, validity or termination) shall be submitted to the Federal District Court for the Southern District of New York provided that, in case the dispute concerns Licensee's obligations concerning royalty reporting or payment obligations or Licensee's obligations of confidentiality, Philips may at its sole discretion submit such dispute to the competent courts in the venue of Licensee's registered office. Licensee hereby irrevocably waives any objection to the jurisdiction, process and venue of any such court and to the effectiveness, execution and enforcement of any order or judgment (including, but not limited to, a default judgment) of any such court in relation to this Agreement, to the maximum extent permitted by the law of any jurisdiction, the laws of which might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgment.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, as of the date first written above.

Koninklijke Philips Electronics N.V.

Nexus Lighting, Inc.

/s/ R.J. Peters

/s/ Michael A. Bauer

(signature)

(signature)

Name: R.J. Peters

Name: Michael A. Bauer

Title: Chief Intellectual Property Officer

Title: President/CEO

Annex A to the LED-based Luminaire and Retrofit Bulb Patent License Agreement  
List of Patents

| CTY | Fil.Date    | Application No. | Pub. Data   | Publication No. | Grant Date  | Grant No.  | Expiry Date |
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| AT  | 2001-Jan-08 | 01907413.7      |             |                 | 2006-Jun-14 | E330448    | 2021-Jan-08 |
| AT  | 2001-Apr-24 | 03028671.0      |             |                 | 2010-Apr-14 | E464771    | 2021-Apr-24 |
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| AT  | 2002-Jun-21 | 02738518.6      |             |                 | 2008-Dec-10 | E417490    | 2022-Jun-21 |
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| AT  | 2007-Nov-06 | 07826984.2      |             |                 | 2010-Jul-28 | E476087    | 2027-Nov-06 |
| AT  | 2007-Nov-27 | 07862228.9      |             |                 | 2011-Mar-02 | E500469    | 2027-Nov-27 |
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| BE  | 1998-Jan-22 | 98900141.7      | 1999-Jan-13 | 0890059-A1      | 2004-Jun-23 | 0890059    | 2018-Jan-22 |
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| BE  | 2002-Jun-21 | 02738518.6      |             |                 | 2008-Dec-10 | 1405551    | 2022-Jun-21 |
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| BE  | 2006-May-24 | 06765708.0      |             |                 | 2009-Mar-18 | 1889519    | 2026-May-24 |
| BE  | 2006-Dec-13 | 06842469.6      | 2008-Sep-10 | 1966624         | 2011-Jun-29 | 1966624    | 2026-Dec-13 |
| BE  | 2007-Sep-20 | 07826476.9      |             |                 | 2011-Mar-02 | 2074866    | 2027-Sep-20 |
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| BE  | 2008-Mar-31 | 08737675.2      | 2010-Jan-13 | 2143303-A       | 2012-Aug-08 | 2143303    | 2028-Mar-31 |
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| BR  | 2006-May-24 | PI 0610118-6    |             |                 |             |            | 2026-May-24 |
| BR  | 2007-Aug-17 | PI 0715880-7    |             |                 |             |            | 2027-Aug-17 |
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| BR  | 2007-Sep-20 | PI 0717018-1    |             |                 |             |            | 2027-Sep-20 |
| BR  | 2007-Oct-11 | PI 0717788-7    |             |                 |             |            | 2027-Oct-11 |
| BR  | 2007-Oct-31 | PI 0718151-5    |             |                 |             |            | 2027-Oct-31 |
| BR  | 2007-Nov-06 | PI 0718524-3    |             |                 |             |            | 2027-Nov-06 |
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| BR  | 2007-Dec-11 | PI 0720017-0    |             |                 |             |            | 2027-Dec-11 |
| BR  | 2007-Dec-11 | PI 0720213-0    |             |                 |             |            | 2027-Dec-11 |
| BR  | 2007-Dec-12 | PI 0720064-1    |             |                 |             |            | 2027-Dec-12 |
| BR  | 2008-Mar-31 | PI 0809846-8    |             |                 |             |            | 2028-Mar-31 |
| BR  | 2008-Dec-02 | PI 0820090-4    |             |                 |             |            | 2028-Dec-02 |
| BR  | 2008-Dec-02 | PI 0820957-0    |             |                 |             |            | 2028-Dec-02 |
| CA  | 1998-Jan-22 | 2249423         |             |                 | 2009-Sep-15 | 2249423    | 2018-Jan-22 |
| CA  | 1998-Jul-27 | 2267406         |             |                 | 2006-Mar-07 | 2267406    | 2018-Jul-27 |
| CA  | 1998-Aug-26 | 2466717         |             |                 | 2010-Jan-26 | 2466717    | 2018-Aug-26 |
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| CA  | 2005-Mar-14 | 2559718         |             |                 | 2012-May-22 | 2559718    | 2025-Mar-14 |
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| CA  | 2005-Jul-29 | 2576099         | 2006-Feb-09 | 2576099         |             |            | 2025-Jul-29 |



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| CTY | Fil.Date    | Application No. | Pub. Data   | Publication No. | Grant Date  | Grant No.   | Expiry Date |
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| CA  | 2005-Aug-02 | 2576304         | 2006-Feb-16 | 2576304         |             |             | 2025-Aug-02 |
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| CA  | 2005-Oct-12 | 2583355         | 2006-Apr-20 | 2583355         |             |             | 2025-Oct-12 |
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List of Patents

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| CN  | 2003-Jun-12 | 200910165991.8  |             |                 | 2012-Apr-11 | ZL200910165991.8 | 2023-Jun-12 |
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| US  | 2007-Jun-20 | 12/306020       | 2009-Sep-17 | 2009-0230884-A1 | 2012-Mar-13 | 8134461   | 2028-Nov-27 |
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| US  | 2007-Jul-03 | 12/306736       | 2009-Jul-30 | 2009-0189448-A1 | 2012-Jul-03 | 8212393   | 2029-Jan-13 |
| US  | 2007-Jul-05 | 12/374320       | 2009-Sep-17 | 2009-0231878-A1 | 2010-Dec-21 | 7854539   | 2027-Dec-05 |
| US  | 2007-Jul-10 | 11/775551       | 2008-Jan-17 | 2008-0012506-A1 | 2008-Dec-09 | 7462997   | 2017-Aug-26 |
| US  | 2007-Jul-12 | 11/777008       | 2008-Jan-17 | 2008/0013314    | 2010-Aug-10 | 7772787   | 2028-Oct-30 |
| US  | 2007-Jul-20 | 11/814472       |             |                 | 2011-Feb-22 | 7894050   | 2026-May-19 |
| US  | 2007-Jul-20 | 11/780574       | 2008-Jan-17 | 2008-0012502-A1 | 2010-Jun-15 | 7737643   | 2026-Apr-08 |
| US  | 2007-Aug-09 | 11/836568       |             |                 | 2011-Sep-27 | 8026673   | 2030-Jul-27 |
| US  | 2007-Aug-09 | 11/836550       | 2008-Jul-10 | 2008-0164854-A1 | 2012-Mar-13 | 8134303   | 2030-Nov-26 |
| US  | 2007-Aug-09 | 11/836560       |             |                 |             |           | 2027-Aug-09 |
| US  | 2007-Aug-16 | 11/893486       | 2008-Mar-20 | 2008/0068839    | 2010-May-11 | 7712926   | 2028-Feb-15 |
| US  | 2007-Aug-21 | 11/842612       | 2008-Feb-28 | 2008/0048095    | 2009-Aug-04 | 7569807   | 2027-Nov-28 |
| US  | 2007-Aug-24 | 60/968002       |             |                 |             |           |             |



Annex A to the LED-based Luminaire and Retrofit Bulb Patent License Agreement  
List of Patents

| CTY | Fil.Date    | Application No. | Pub. Data   | Publication No.    | Grant Date  | Grant No. | Expiry Date |
|-----|-------------|-----------------|-------------|--------------------|-------------|-----------|-------------|
| US  | 2007-Sep-03 | 12/439307       | 2010-Apr-15 | 2010-0094439-A1    |             |           | 2027-Sep-03 |
| US  | 2007-Sep-18 | 12/439798       | 2009-Dec-31 | 2009-0321666-A1    |             |           | 2027-Sep-18 |
| US  | 2007-Sep-20 | 12/443852       | 2010-Feb-04 | 2010-0026191-A1    | 2011-Nov-29 | 8067898   | 2028-Aug-30 |
| US  | 2007-Sep-20 | 12/443859       | 2010-Jul-01 | 2010-164399-A1     | 2012-Jan-31 | 8106599   | 2028-May-09 |
| US  | 2007-Sep-20 | 12/443855       | 2010-Mar-25 | 2010-0072902-A1    | 2011-Oct-11 | 8035313   | 2028-Sep-27 |
| US  | 2007-Sep-20 | 11/858847       | 2008-Mar-20 | 2008/0068192       | 2010-Mar-30 | 7688002   | 2027-Nov-28 |
| US  | 2007-Oct-11 | 12/445320       | 2010-Apr-15 | 2010-0091488-A1    | 2011-Nov-01 | 8047696   | 2028-Mar-31 |
| US  | 2007-Oct-19 | 11/875196       | 2008-Apr-24 | 2008-0094005-A1    | 2011-Jun-14 | 7961113   | 2029-Oct-16 |
| US  | 2007-Oct-31 | 11/931684       | 2008-May-01 | 2008/0101064       | 2010-Jun-08 | 7731389   | 2028-Aug-01 |
| US  | 2007-Nov-06 | 12/513520       | 2010-Mar-25 | 2010-0072901-A1    | 2011-Sep-06 | 8013533   | 2028-Aug-25 |
| US  | 2007-Nov-09 | 11/938051       |             |                    | 2010-Aug-24 | 7781979   | 2029-Feb-17 |
| US  | 2007-Nov-27 | 12/516027       | 2010-Feb-25 | 2010-0045478-A1    |             |           | 2027-Nov-27 |
| US  | 2007-Nov-27 | 11/945480       |             |                    | 2010-Oct-05 | 7806558   | 2028-Dec-31 |
| US  | 2007-Dec-04 | 12/517371       | 2010-Apr-08 | 2010-0084995-A1    | 2012-Feb-14 | 8115410   | 2029-Feb-05 |
| US  | 2007-Dec-04 | 60/992186       |             |                    |             |           |             |
| US  | 2007-Dec-05 | 12/517810       | 2010-Dec-09 | 2010-0308745-A1    | 2012-May-08 | 8174210   | 2029-Jan-13 |
| US  | 2007-Dec-07 | 12/517367       | 2010-Apr-01 | 2010-0079091-A1    |             |           | 2027-Dec-07 |
| US  | 2007-Dec-11 | 12/001786       | 2008-Sep-04 | 2008-0215279-A1    | 2011-Jan-11 | 7868562   | 2029-Jan-25 |
| US  | 2007-Dec-11 | 12/001642       | 2008-Jul-10 | 2008-0167734-A1    |             |           | 2027-Dec-11 |
| US  | 2007-Dec-12 | 11/955196       |             |                    |             |           | 2027-Dec-12 |
| US  | 2008-Mar-31 | 12/593308       | 2010-Apr-29 | 2010-0102732-A1    | 2012-Jun-19 | 8203284   | 2029-Jan-06 |
| US  | 2008-Apr-04 | 12/593382       | 2010-May-13 | 2010-0118531-A1    | 2012-Jul-17 | 8220958   | 2028-Apr-04 |
| US  | 2008-Apr-15 | 12/595646       | 2010-May-13 | 2010-0117543-A1    | 2012-Sep-04 | 8258707   | 2028-Apr-15 |
| US  | 2008-Apr-21 | 12/596484       | 2010-Jun-03 | 2010-0134041-A1    | 2012-Apr-17 | 8159454   | 2028-Dec-05 |
| US  | 2008-Apr-23 | 12/596863       | 2010-May-13 | 2010-0117656-A1    | 2011-Dec-13 | 8076953   | 2028-Jun-29 |
| US  | 2008-Apr-28 | 12/598098       | 2010-Jun-03 | 2010-0134042-A1    |             |           | 2028-Apr-28 |
| US  | 2008-Apr-30 | 12/113320       | 2008-Nov-13 | 2008-0278092-A1    |             |           | 2028-Apr-30 |
| US  | 2008-May-02 | 12/114062       | 2008-Nov-13 | 2008-0278941-A1    | 2011-Feb-01 | 7878683   | 2028-Aug-20 |
| US  | 2008-May-09 | 12/599351       | 2010-Dec-02 | 2010-0301780-A1    |             |           | 2028-May-09 |
| US  | 2008-May-30 | 12/602206       | 2010-Jul-08 | 2010-0171771-A1    |             |           | 2028-May-30 |
| US  | 2008-Jun-09 | 12/663522       | 2010-Jul-01 | 2010-0165618-A1    |             |           | 2028-Jun-09 |
| US  | 2008-Jun-23 | 12/665126       | 2010-Jul-29 | 2010-0188007-A1    | 2012-Sep-04 | 8258713   | 2028-Jun-23 |
| US  | 2008-Jun-30 | 12/666826       | 2010-Jul-22 | 2010-0181936-A1    | 2012-Aug-14 | 8242710   | 2028-Jun-30 |
| US  | 2008-Jul-21 | 12/669059       | 2010-Aug-05 | 2010-0194293-A1    | 2012-Apr-17 | 8159155   | 2029-Apr-18 |
| US  | 2008-Aug-14 | 12/673038       | 2012-May-17 | US-2012-0119670-A1 |             |           | 2028-Aug-14 |
| US  | 2008-Aug-29 | 12/281165       | 2009-Jan-22 | 2009-0021175-A1    |             |           | 2028-Aug-29 |
| US  | 2008-Nov-05 | 12/265354       | 2009-Mar-19 | 2009-0072761-A1    |             |           | 2025-Dec-09 |
| US  | 2008-Nov-24 | 12/744088       | 2010-Sep-30 | 2010-0244734-A1    |             |           | 2028-Nov-24 |
| US  | 2008-Dec-02 | 12/746540       | 2010-Sep-30 | 2010-0244707-A1    |             |           | 2028-Dec-02 |
| US  | 2008-Dec-02 | 12/746551       | 2010-Oct-21 | 2010-0264834-A1    |             |           | 2028-Dec-02 |
| US  | 2008-Dec-16 | 12/747521       | 2010-Oct-28 | 2010-0271843-A1    |             |           | 2028-Dec-16 |
| US  | 2008-Dec-22 | 12/808910       | 2011-Nov-24 | 2011-0285292-A1    |             |           | 2028-Dec-22 |
| US  | 2008-Dec-29 | 12/810535       | 2011-Feb-10 | 2011-0035404-A1    |             |           | 2028-Dec-29 |
| US  | 2008-Dec-30 | 12/345953       | 2010-Jun-17 | 2010-0148689-A1    | 2011-Sep-06 | 8013281   | 2020-Dec-20 |
| US  | 2009-May-28 | 12/473739       | 2010-Sep-16 | 2010-0231133-A1    |             |           | 2027-Nov-09 |
| US  | 2010-Jan-27 | 12/694353       | 2010-May-27 | 2010-0127633-A1    | 2011-Jul-26 | 7986103   | 2025-Jun-28 |
| US  | 2010-Aug-11 | 12/854200       | 2011-Mar-03 | 2011-0050122-A1    | 2012-Feb-21 | 8120279   | 2025-Jul-14 |
| US  | 2010-Oct-08 | 12/900535       | 2011-Feb-03 | 2011-0025205-A1    | 2012-Aug-14 | 8240900   | 2025-Sep-19 |
| US  | 2010-Dec-22 | 12/975991       | 2011-Apr-21 | 2011-0090684-A1    |             |           | 2028-Aug-20 |
| US  | 2011-May-16 | 13/108551       | 2011-Sep-08 | 2011-0216538-A1    |             |           | 2031-May-16 |
| US  | 2011-Nov-04 | 13/289609       | 2012-Feb-23 | US-2012-0044670-A1 | 2012-Jun-26 | 8206001   | 2026-May-22 |
| US  | 2012-Mar-12 | 13/417622       | 2012-Jul-05 | US-2012-0169254-A1 |             |           |             |
| US  | 2012-Jun-04 | 13/487305       |             |                    |             |           |             |

LEGEND

|            |  |
|------------|--|
| CTY        | Country Code as used by WIPO                                     |
| App Nr     | Number of the patent application at the respective patent office |
| Fil date   | Filing Date  |
| Pub Nr     | Publication Number   |
| Pub date   | Publication Date   |
| Grant Nr   | Grant Number   |
| Grant date | Grant Date   |
| Exp date   | Estimated Expiry Date*   |

\* In case the estimated expiry date deviates from the actual expiry date, the latter prevails.



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Annex A to the LED-based Luminaire and Retrofit Bulb Patent License Agreement  
List of Patents

| <u>CTY</u> | <u>Fil.Date</u> | <u>Application No.</u> | <u>Pub. Data</u> | <u>Publication No.</u> | <u>Grant Date</u> | <u>Grant No.</u> | <u>Expiry Date</u> |
|------------|-----------------|------------------------|------------------|------------------------|-------------------|------------------|--------------------|
|------------|-----------------|------------------------|------------------|------------------------|-------------------|------------------|--------------------|

NOTES:

1. The above list of Patents is for information purposes only and may be updated from time to time. In the event of any discrepancy between the above information and any patent license agreement related to this licensing program, the patent license agreement shall prevail.
2. For any question, contact us at: [info.SSLicensing@philips.com](mailto:info.SSLicensing@philips.com)

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Annex B  
To  
Patent License Agreement

AUDIT GUIDELINES

Licensee shall have its C.F.O. or accountant make the following statement pursuant to Section 4.1 of the Settlement and Patent License Agreement:

Licensee has reviewed the accompanying Reporting Forms, duly initialed by us for identification purposes, for the period starting [ddmmyy] and ending [ddmmyy] as submitted under the terms of a license agreement dated August 1, 2012, between Philips and Nexxus Lighting, Inc. ("the Agreement").

**Basis of opinion**

We have conducted our review in accordance with those elements of generally accepted international standards for the purposes of forming an opinion on the Reporting Forms. We are reasonably assured that the Reporting Forms are free of material misstatements. We have examined, on a test basis, evidence supporting the amounts and disclosures in the Reporting Forms.

**Opinion**

In our opinion, the Reporting Forms referred to above present fairly, in all material respects, the information required to be reported under the Agreement by Nexxus Lighting, Inc. for the [xx] month period ending [ddmmyy] and the amount of royalties corresponding therewith, under the Agreement referred to above.

(signed)

[date]

Enclosures: Reporting Forms (xx pages)

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[XXXX] = CERTAIN INFORMATION ON THIS PAGE HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED INFORMATION.

Annex C  
To  
Patent License Agreement  
List of Qualified Suppliers

[XXXX]

[XXXX]

[XXXX]

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Annex D  
To  
Patent License Agreement

List of Trademarks Used for Licensed Products:

Array™

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT  
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael A. Bauer, certify that:

1. I have reviewed this report on Form 10-Q for the quarterly period ended September 30, 2012 of Nexxus Lighting, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2012

/s/ Michael A. Bauer

Michael A. Bauer  
President and Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT  
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Gary R. Langford, certify that:

1. I have reviewed this report on Form 10-Q for the quarterly period ended September 30, 2012 of Nexxus Lighting, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2012

/s/ Gary R. Langford

\_\_\_\_\_  
Gary R. Langford  
Chief Financial Officer

**Certification of Chief Executive Officer and Chief Financial Officer Pursuant to  
18 U.S.C. Section 1350,  
as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

This Certification is being filed pursuant to 18 U.S.C. Section 1350, as adopted by Section 906 of the Sarbanes-Oxley Act of 2002. This Certification is included solely for the purposes of complying with the provisions of Section 906 of the Sarbanes-Oxley Act and is not intended to be used for any other purpose. In connection with the accompanying Quarterly Report on Form 10-Q of Nexxus Lighting, Inc. for the quarter ended September 30, 2012, each of the undersigned hereby certifies in his capacity as an officer of Nexxus Lighting, Inc. that to such officer's knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 14, 2012

By: /s/ Michael A. Bauer

Michael A. Bauer  
Chief Executive Officer

Dated: November 14, 2012

By: /s/ Gary R. Langford

Gary R. Langford  
Chief Financial Officer