

LANDEC CORP \CA\  
Form 10-Q  
January 05, 2012

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

FORM 10-Q

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

For the Fiscal Quarter Ended November 27, 2011, or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT  
OF 1934

For the Transition period from \_\_\_\_ to \_\_\_\_\_.

Commission file number: 0-27446

LANDEC CORPORATION  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other  
jurisdiction of  
incorporation  
or  
organization)

94-3025618  
(IRS  
Employer  
Identification  
Number)

3603 Haven Avenue  
Menlo Park, California 94025  
(Address of principal executive offices)

Registrant's telephone number, including area code:  
(650) 306-1650

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 at least the past 90 days.

Yes  No

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

Yes  No

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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 definition of "large accelerated filer" and "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer

Accelerated Filer

Non Accelerated Filer

Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes

No

As of December 23, 2011, there were 25,528,195 shares of Common Stock outstanding.

## LANDEC CORPORATION

FORM 10-Q For the Fiscal Quarter Ended November 27, 2011

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## PART I. FINANCIAL INFORMATION

## Item 1. Financial Statements

LANDEC CORPORATION  
 CONSOLIDATED BALANCE SHEETS  
 (In thousands, except share and per share amounts)

	November 27, 2011 (Unaudited)	May 29, 2011 (1)
<b>ASSETS</b>		
<b>Current Assets:</b>		
Cash and cash equivalents	\$4,235	\$8,135
Marketable securities	24,236	28,124
Accounts receivable, less allowance for doubtful accounts of \$348 and \$342 at November 27, 2011 and May 29, 2011, respectively	29,055	21,648
Accounts receivable, related party	314	453
Income taxes receivable	395	571
Inventories, net	20,175	20,161
Notes and advances receivable	1,351	5
Deferred taxes	1,681	542
Prepaid expenses and other current assets	5,735	5,987
<b>Total Current Assets</b>	<b>87,177</b>	<b>85,626</b>
Investment in non-public company, non-fair value	793	793
Investment in non-public company, fair value	16,836	15,662
Property and equipment, net	52,247	51,779
Goodwill, net	36,462	36,462
Trademarks/tradenames, net	12,428	12,428
Customer relationships, net	3,212	3,366
Other assets	253	196
<b>Total Assets</b>	<b>\$209,408</b>	<b>\$206,312</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current Liabilities:</b>		
Accounts payable	\$18,887	\$16,747
Related party accounts payable	332	300
Accrued compensation	3,385	3,080
Other accrued liabilities	13,301	3,581
Deferred revenue	355	2,657
Current portion of long-term debt	4,330	4,330
<b>Total Current Liabilities</b>	<b>40,590</b>	<b>30,695</b>
Long-term debt, less current portion	13,170	15,500
Deferred taxes	12,014	11,338
Other non-current liabilities	1,217	11,053
<b>Total Liabilities</b>	<b>66,991</b>	<b>68,586</b>
<b>Stockholders' Equity:</b>		
Common stock, \$0.001 par value; 50,000,000 shares authorized; 25,565,379 and 26,405,799 shares issued and outstanding at November 27, 2011 and May 29,	26	27

2011, respectively		
Additional paid-in capital	118,695	119,169
Accumulated other comprehensive loss	(235 )	(267 )
Retained earnings	22,278	17,126
Total Stockholders' Equity	140,764	136,055
Non controlling interest	1,653	1,671
Total Equity	142,417	137,726
Total Liabilities and Stockholders' Equity	\$209,408	\$206,312

(1) Derived from audited financial statements.

See accompanying notes.

LANDEC CORPORATION  
CONSOLIDATED STATEMENTS OF INCOME  
(Unaudited)  
(In thousands, except per share amounts)

	Three Months Ended		Six Months Ended	
	November 27, 2011	November 28, 2010	November 27, 2011	November 28, 2010
Revenues:				
Product sales	\$79,352	\$67,720	\$150,211	\$129,980
Services revenue, related party	805	986	1,785	2,051
License fees	1,413	1,462	2,875	3,089
Total revenues	81,570	70,168	154,871	135,120
Cost of revenue:				
Cost of product sales	66,292	56,478	126,291	107,202
Cost of product sales, related party	1,602	960	2,872	2,522
Cost of services revenue	666	875	1,448	1,725
Total cost of revenue	68,560	58,313	130,611	111,449
Gross profit	13,010	11,855	24,260	23,671
Operating costs and expenses:				
Research and development	2,337	2,255	4,670	4,487
Selling, general and administrative	6,464	6,072	12,508	11,725
Total operating costs and expenses	8,801	8,327	17,178	16,212
Operating income	4,209	3,528	7,082	7,459
Dividend income	281	—	563	—
Interest income	81	117	157	224
Interest expense	(163)	(209)	(340)	(435)
Other income (expense)	1,079	(44)	1,088	(102)
Net income before taxes	5,487	3,392	8,550	7,146
Income tax expense	(2,049)	(1,209)	(3,159)	(2,561)
Consolidated net income	3,438	2,183	5,391	4,585
Non controlling interest	(98)	(128)	(239)	(226)
Net income applicable to Common Stockholders	\$3,340	\$2,055	\$5,152	\$4,359
Basic net income per share	\$0.13	\$0.08	\$0.20	\$0.17
Diluted net income per share	\$0.13	\$0.08	\$0.20	\$0.16
Shares used in per share computation				
Basic	25,885	26,324	26,147	26,412
Diluted	26,135	26,560	26,399	26,639

See accompanying notes.





LANDEC CORPORATION  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(Unaudited)  
(In thousands)

	Six Months Ended	
	November 27, 2011	November 28, 2010
Cash flows from operating activities:		
Consolidated net income	\$ 5,391	\$ 4,585
Adjustments to reconcile net income to net cash (used in) provided by operating activities:		
Depreciation and amortization	2,729	2,602
Stock-based compensation expense	885	962
Tax benefit from stock-based compensation expense	(3,378 )	(1,585 )
Increase in receivable from Monsanto for guaranteed termination fee	(400 )	(400 )
Deferred taxes	(463 )	737
Change in investment in non-public company (fair market value)	(1,174 )	—
Changes in current assets and current liabilities:		
Accounts receivable, net	(7,407 )	(6,033 )
Accounts receivable, related party	139	268
Income taxes receivable	3,554	1,682
Inventories, net	(14 )	(3,637 )
Issuance of notes and advances receivable	(1,586 )	(1,565 )
Collection of notes and advances receivable	240	637
Prepaid expenses and other current assets	652	1,530
Accounts payable	2,140	4,574
Related party accounts payable	32	(227 )
Accrued compensation	304	104
Other accrued liabilities	(84 )	(16 )
Deferred revenue	(2,302 )	(2,150 )
Net cash (used in) provided by operating activities	(742 )	2,068
Cash flows from investing activities:		
Purchases of property and equipment	(3,042 )	(3,450 )
Purchase of marketable securities	(19,066 )	(41,784 )
Proceeds from maturities and sales of marketable securities	22,954	22,612
Net cash provided by (used in) investing activities	846	(22,622 )
Cash flows from financing activities:		
Repurchase of outstanding common stock	(4,805 )	(1,184 )
Taxes paid by Company for stock swaps and RSUs	(24 )	(49 )
Proceeds from sale of common stock	91	109
Tax benefit from stock-based compensation expense	3,378	1,585
Principal payments on long-term debt	(2,330 )	(1,940 )
(Increase) decrease in other assets	(57 )	24
Payments to minority interest holders	(257 )	(361 )
Net cash used in financing activities	(4,004 )	(1,816 )
Net decrease in cash and cash equivalents	(3,900 )	(22,370 )
Cash and cash equivalents at beginning of period	8,135	27,817
Cash and cash equivalents at end of period	\$ 4,235	\$ 5,447

Supplemental schedule of noncash operating activities:

Income tax expense not payable	\$ 3,378	\$ 1,585
Long-term receivable from Monsanto for guaranteed termination fee	\$ 400	\$ 400
Unrealized gain (loss) from interest rate swap	\$ 32	\$ (152 )

See accompanying notes

LANDEC CORPORATION  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies

Organization

Landec Corporation and its subsidiaries (“Landec” or the “Company”) design, develop, manufacture and sell polymer products for food and agricultural products, medical devices and licensed partner applications that incorporate Landec’s patented polymer technologies. The Company has two proprietary polymer technology platforms: 1) Intelimer® polymers, and 2) hyaluronan (“HA”) biopolymers. The Company’s HA biopolymers are proprietary in that they are specially formulated for specific customers to meet strict regulatory requirements. The Company’s polymer technologies, along with its customer relationships and trade names, are the foundation, and a key differentiating advantage upon which Landec has built its business. The Company sells specialty packaged fresh-cut vegetables and whole produce to retailers and club stores, primarily in the United States and Asia through its Apio, Inc. (“Apio”) subsidiary, HA-based biomaterials through its Lifecore Biomedical, Inc. (“Lifecore”) subsidiary, and Intellicoat® coated seed products through its Landec Ag LLC (“Landec Ag”) subsidiary.

Basis of Presentation

The accompanying unaudited consolidated financial statements of Landec have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions for Form 10-Q and Article 10 of Regulation S-X. In the opinion of management, all adjustments (consisting of normal recurring accruals) have been made which are necessary to present fairly the financial position at November 27, 2011 and the results of operations and cash flows for all periods presented. Although Landec believes that the disclosures in these financial statements are adequate to make the information presented not misleading, certain information normally included in financial statements and related footnotes prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted in accordance with the rules and regulations of the Securities and Exchange Commission. The accompanying financial data should be reviewed in conjunction with the audited financial statements and accompanying notes included in Landec's Annual Report on Form 10-K for the fiscal year ended May 29, 2011.

The results of operations for the six months ended November 27, 2011 are not necessarily indicative of the results that may be expected for an entire fiscal year because there is some seasonality in Apio’s food business, particularly, Apio’s Food Export business and the order patterns of Lifecore’s customers can lead to significant fluctuations in Lifecore’s quarterly results of operations.

Basis of Consolidation

The consolidated financial statements are presented on the accrual basis of accounting in accordance with U.S. generally accepted accounting principles and include the accounts of Landec and its subsidiaries, Apio, Lifecore and Landec Ag. All material inter-company transactions and balances have been eliminated.

Arrangements that are not controlled through voting or similar rights are reviewed under the guidance for variable interest entities (“VIEs”). A company is required to consolidate the assets, liabilities and operations of a VIE if it is determined to be the primary beneficiary of the VIE.

In June 2009, the FASB changed the consolidation analysis for VIEs to require a qualitative analysis to determine the primary beneficiary of the VIE.



Under the new guidance, an entity is a VIE and subject to consolidation, if by design: a) the total equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support provided by any parties, including equity holders or b) as a group the holders of the equity investment at risk lack any one of the following three characteristics: (i) the power, through voting rights or similar rights to direct the activities of an entity that most significantly impact the entity's economic performance, (ii) the obligation to absorb the expected losses of the entity, or (iii) the right to receive the expected residual returns of the entity. The Company reviewed the consolidation guidance and concluded that the non-public companies in which the Company holds equity investments are not VIEs. As a result, the Company has concluded that there is no impact on the financial statements as a result of the adoption of the new guidance.

Under applicable accounting guidance, a Company also considered the requirements to consolidate an entity in which it holds voting control and concluded that due to the lack of voting control, the Company is not required to consolidate the investments in non-public companies.

#### Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make certain estimates and judgments that affect the amounts reported in the financial statements and accompanying notes. The accounting estimates that require management's most significant and subjective judgments include revenue recognition; sales returns and allowances; recognition and measurement of current and deferred income tax assets and liabilities; the assessment of recoverability of long-lived assets; the valuation of intangible assets and inventory; the valuation and nature of impairments of investments; and the valuation and recognition of stock-based compensation.

#### Cash, Cash Equivalents and Marketable Securities

The Company records all highly liquid securities with three months or less from date of purchase to maturity as cash equivalents. These securities consist mainly of certificate of deposits (CDs), money market funds and U.S. Treasuries.

Short-term marketable securities consist of CDs that are FDIC insured and single A or better rated municipal bonds with original maturities of more than three months at the date of purchase. The aggregate amount of CDs included in marketable securities at November 27, 2011 and May 29, 2011 was \$2.3 million and zero, respectively. The Company classifies all marketable securities with readily determined market values as "available for sale". At November 27, 2011, \$18.1 million of marketable securities had contractual maturities of less than one year and \$3.8 million had maturities of one to two years. Investments in marketable securities are carried at fair market value. Unrealized gains and losses are reported as a component of stockholders' equity. The cost of marketable securities is adjusted for amortization of premiums and discounts to maturity. This amortization is recorded to interest income. Realized gains and losses on the sale of available-for-sale securities are also recorded to interest income and were not significant for the three and six months ended November 27, 2011 and November 28, 2010. The cost of securities sold is based on the specific identification method.

#### Financial Instruments

The Company's financial instruments are primarily composed of marketable securities, commercial-term trade payables, grower advances, and notes receivable, as well as long-term notes receivables and debt instruments. For short-term instruments, the historical carrying amount approximates the fair value of the instrument. Fair values for long-term financial instruments not readily marketable are estimated based upon discounted future cash flows at prevailing market interest rates. Based on these assumptions, management believes the fair market values of the

Company's financial instruments are not materially different from their recorded amounts as of November 27, 2011 or November 28, 2010.

#### Investments in Non-Public Companies

The Company's investment in Aesthetic Sciences Corporation ("Aesthetic Sciences"), a medical device company, is carried at cost after adjustment for impairment losses. Since there is no readily available market value information, the Company periodically reviews this investment to determine if any other than temporary declines in value have occurred based on the financial stability and viability of Aesthetic Sciences.

The Company's investment in Windset Holdings 2010 Ltd., a Canadian corporation ("Windset"), is reported as an investment in non-public company, fair value, in the accompanying Consolidated Balance Sheets. The Company accounts for its investment in Windset under the fair value option (see Note 3).

## Intangible Assets

The Company's intangible assets are comprised of customer relationships with a finite estimated useful life of twelve years and trade names and goodwill with indefinite lives.

Finite-lived intangible assets are reviewed for possible impairment whenever events or changes in circumstances occur that indicate that the carrying amount of an asset (or asset group) may not be recoverable. Indefinite lived intangible assets are reviewed for impairment at least annually by comparing the fair value of the asset to its carrying value to determine if there has been an impairment. Goodwill is reviewed for impairment at least annually by comparing the fair value of the related reporting unit to its carrying value to determine if there has been an impairment.

## Fair Value Measurements

The Company accounts for financial assets and liabilities, financial instruments and certain other items at fair value. The Company has also elected the fair value option for its investment in a non-public company (see Note 3).

US Generally Accepted Accounting Principals has established a three-tier hierarchy for fair value measurements, which prioritizes the inputs used in measuring fair value as follows:

Level 1 – observable inputs such as quoted prices for identical instruments in active markets.

Level 2 – inputs other than quoted prices in active markets that are observable either directly or indirectly through corroboration with observable market data.

Level 3 – unobservable inputs in which there is little or no market data, which would require the Company to develop its own assumptions.

As of November 27, 2011, the Company held certain assets and liabilities that are required to be measured at fair value on a recurring basis, including cash equivalents, marketable securities, interest rate swap, liability for contingent consideration in connection with the acquisition of Lifecore and its minority interest investment in Windset.

The fair value of the Company's cash equivalents and marketable securities is determined based on observable inputs that are readily available in public markets or can be derived from information available in publicly quoted markets. Therefore, the Company has categorized its cash equivalents and marketable securities as Level 1.

The fair value of the Company's interest rate swap is determined based on model inputs that can be observed in a liquid market and key inputs include yield curves and are categorized as Level 2 inputs. As of November 27, 2011, the Company recorded to other comprehensive loss on the consolidated balance sheets an unrealized loss of \$235,000, net of taxes of \$144,000, representing the cumulative change in the interest rate swap since inception. If the interest rate swap is terminated or the debt borrowed is paid off prior to April 30, 2015, the amount of unrealized loss or gain included in other comprehensive income (loss) would be reclassified to earnings. The Company has no intentions of terminating the interest rate swap or prepaying the debt in the next twelve months. The interest rate swap liability is included in other non-current liabilities as of November 27, 2011 and May 29, 2011.

The fair value of the Company's liability for contingent consideration is based on significant inputs not observed in the market and thus represents a Level 3 measurement. The Company determined the fair value of the liability for the contingent consideration based on a probability-weighted discounted cash flow analysis, as further discussed in Note 2.

The Company has elected the fair value option of accounting for its investment in Windset. The fair value of the Company's investment in Windset utilizes significant unobservable inputs in the discounted cash flow models, including projected cash flows, growth rates and the discount rate, and is therefore considered Level 3, as further discussed in Note 3.

The Company believes its valuation methods are appropriate and consistent with those of other market participants. However, imprecision in estimating unobservable market inputs can affect the amount of gain or loss recorded for a particular asset or liability. As a result, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different estimate of fair value at the reporting date.

The Company has no other financial assets or liabilities for which fair value measurement has been adopted.



## New Accounting Pronouncements

## Recently Adopted Pronouncements

### Intangibles-Goodwill and Other

In September 2011, the FASB issued ASU No. 2011-08, "Intangibles-Goodwill and Other" that will allow an entity to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. Under this amendment, an entity would not be required to calculate the fair value of a reporting unit unless the entity determines, based on a qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The amendment includes a number of events and circumstances for an entity to consider in conducting the qualitative assessment. The guidance is effective for fiscal years beginning after December 15, 2011 with early adoption permitted. The Company does not expect that the adoption of this update will have a material impact on its consolidated financial statements at this time.

### Presentation of Comprehensive Income

In June 2011, the FASB issued ASU No. 2011-05, "Presentation of Comprehensive Income" that improves the comparability, consistency, and transparency of financial reporting and increases the prominence of items reported in other comprehensive income by eliminating the option to present components of other comprehensive income as part of the statement of changes in stockholders' equity. The amendments in this standard require that all non-owner changes in stockholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. Under either method, adjustments must be displayed for items that are reclassified from other comprehensive income ("OCI") to net income, in both net income and OCI. The standard does not change the current option for presenting components of OCI gross or net of the effect of income taxes, provided that such tax effects are presented in the statement in which OCI is presented or disclosed in the notes to the financial statements. Additionally, the standard does not affect the calculation or reporting of earnings per share. For public entities, the amendments in this ASU are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 and are to be applied retrospectively, with early adoption permitted. The Company does not expect the adoption of this standard to have a material impact on its consolidated financial statements.

## 2. Acquisition of Lifecore Biomedical, Inc.

On April 30, 2010 (the "Acquisition Date"), the Company acquired all of the common stock of Lifecore Biomedical, Inc. ("Lifecore") under a Stock Purchase Agreement ("Purchase Agreement") in order to expand its product offerings and enter into new markets. Lifecore was a privately-held hyaluronan-based biomaterials company located in Chaska, Minnesota. Lifecore is principally involved in the development and manufacture of products utilizing hyaluronan, a naturally occurring polysaccharide that is widely distributed in the extracellular matrix of connective tissues in both animals and humans.

Under the Purchase Agreement, the aggregate consideration payable by the Company to the former Lifecore stockholder at closing consisted of \$40.0 million in cash, which included \$6.6 million that is held in an escrow account to secure the Company's rights with regards to indemnification, representations, warranties and covenants included in the Purchase Agreement. The escrow account is in the name of the seller and Landec's rights under the escrow agreement consist solely of its ability to file a claim against the escrow. Half of the escrow, or \$3.3 million, was released and paid to the former Lifecore shareholder in May 2011. In addition, the Company may be required to pay up to an additional \$10.0 million in earn out payments in the event that Lifecore achieves certain revenue targets in calendar years 2011 and 2012.



The acquisition date fair value of the total consideration transferred was \$49.65 million, which consisted of the following (in thousands):

Cash	\$40,000
Contingent consideration	9,650
Total	\$49,650

The assets and liabilities of Lifecore were recorded at their respective estimated fair values as of the date of the acquisition using generally accepted accounting principles for business combinations. The excess of the purchase price over the fair value of the net identifiable assets acquired has been allocated to goodwill. Goodwill represents a substantial portion of the acquisition proceeds because of the workforce in-place at acquisition and because of Lifecore's long history and future prospects. Management believes that there is further growth potential by extending Lifecore's product lines into new channels.

The following table summarizes the estimated fair values of Lifecore's assets acquired and liabilities assumed and related deferred income taxes, effective April 30, 2010, the date the Company obtained control of Lifecore (in thousands).

Cash and cash equivalents	\$	318
Accounts receivable, net		1,860
Inventories, net		9,009
Property and equipment		25,529
Other tangible assets		1,455
Intangible assets		7,900
Total identifiable assets acquired		46,071
Accounts payable and other liabilities		(2,983 )
Long-term debt		(4,157 )
Deferred taxes		(3,162 )
Total liabilities assumed		(10,302 )
Net identifiable assets acquired		35,769
Goodwill		13,881
Net assets acquired	\$	49,650

The Company used a combination of the market and cost approaches to estimate the fair values of the Lifecore assets acquired and liabilities assumed. During the measurement period (which is not to exceed one year from the acquisition date), the Company is required to retrospectively adjust the provisional assets or liabilities if new information is obtained about facts and circumstances that existed as of the acquisition date that, if known, would have resulted in the recognition of those assets or liabilities as of that date. The Company has finalized the fair values of the acquired assets and assumed liabilities and completed the purchase price allocation as of April 30, 2011.

#### Inventory

A step-up in the value of inventory of \$523,000 was recorded in the allocation of the purchase price based on valuation estimates. During the three and six months ended November 28, 2010, \$132,000 and \$294,000, respectively, of this step-up was charged to cost of products sold as the inventory was sold. The entire step up was charged to cost of product sold during fiscal years 2010 and 2011 and no step up remained in inventory as of May 29, 2011.

#### Intangible Assets

The Company identified two intangible assets in connection with the Lifecore acquisition: trade names valued at \$4.2 million, which is considered to be an indefinite life asset and therefore will not be amortized; and customer base valued at \$3.7 million with a twelve year useful life. The trade name intangible asset was valued using the relief from royalty valuation method and the customer relationship intangible asset was valued using the multi-period excess earnings method.

## Goodwill

The excess of the consideration transferred over the fair values assigned to the assets acquired and liabilities assumed was \$13.9 million. The goodwill can be attributable to the work force in place at the time of the acquisition and to Lifecore's long history and future prospects. None of the goodwill is expected to be deductible for income tax purposes. The Company will test goodwill for impairment on an annual basis or more frequently, if deemed necessary.

## Liability for Contingent Consideration

In addition to the cash consideration paid to the former shareholder of Lifecore, the Company may be required to pay up to an additional \$10.0 million in earn out payments based on Lifecore achieving certain revenue targets in calendar years 2011 and 2012. The fair value of the liability for the contingent consideration recognized on the acquisition date was \$9.93 million and \$9.84 million, as of November 27, 2011 and May 29, 2011, respectively, and is classified in other accrued liabilities in the Consolidated Balance Sheets. The Company projects that it will pay the entire \$10 million earn out in late fiscal year 2012 or early fiscal year 2013.

## 3. Investments in non-public companies

In December 2005, Landec entered into a licensing agreement with Aesthetic Sciences for the exclusive rights to use Landec's Intelimer® materials technology for the development of dermal fillers worldwide. The Company received shares of preferred stock in exchange for the license with a valuation of \$1.8 million. Aesthetic Sciences sold the rights to its Smartfil™ Injector System on July 16, 2010. Landec evaluated its investment in Aesthetic Sciences for impairment, utilizing a discounted cash flow analysis. Based on the terms of the sale, the Company determined that its investment was other than temporarily impaired and therefore recorded an impairment charge of \$1.0 million during fiscal year 2010. The Company's carrying value of its investment in Aesthetic Sciences is \$793,000 as of November 27, 2011.

On February 15, 2011, Apio entered into a share purchase agreement (the "Purchase Agreement") with Windset. Pursuant to the Purchase Agreement, Apio purchased 150,000 non-voting senior preferred shares for \$15 million and 201 common shares for \$201 issued by Windset (the "Purchased Shares"). The common shares purchased represent a 20.1% interest in Windset. The non-voting senior preferred shares yield a cash dividend of 7.5% annually. The dividend is payable within 90 days of each anniversary of the execution of the Purchase Agreement. The Purchase Agreement includes a put and call option, which can be exercised on the sixth anniversary of the Purchase Agreement whereby Apio can exercise the put to sell its Purchased Shares to Windset, or Windset can exercise the call to purchase the Purchased Shares from Apio, in either case, at a price equal to 20.1% of the appreciation in the fair market value of Windset from the date of the Company's investment through the put and call date, plus the original purchase price of the Purchased Shares. Under the terms of the arrangement with Windset, the Company is entitled to designate one of five members on the Board of Directors of Windset.

In accordance with accounting guidance, the investment in Windset does not qualify for equity method accounting as the investment does not meet the criteria of in-substance common stock due to returns through the annual dividend on the non-voting senior preferred shares t