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

FORM 10-K

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

For the fiscal year ended December 31, 2009

o **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 0-24230

ENERGY FOCUS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	**94-3021850**
(State of incorporation)	(I.R.S. Employer Identification No.)

32000 Aurora Road
Solon, Ohio 44139
(Address of principal executive officers, including zip code)

Registrant's telephone number, including area code: **440.715.1300**

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

Securities registered pursuant to Section 12(g) of the Exchange Act:

Title of Each Class
Common Stock, Par Value $0.0001
Series A Participating Preferred Stock Purchase Rights

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined by Rule 405 of the Securities Act of 1933. Yes o No ☑

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Date 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 o NO o

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company.

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

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

Aggregate market value (on basis of closing bid price) of voting stock held by non-affiliates as of June 30, 2009: $9,189,761

Number of the registrant's shares of common stock outstanding as of February 28, 2010: 21,250,304

Documents Incorporated by Reference

Portions of the proxy statement for the 2010 Annual Meeting of Shareholders to be filed with the Securities and Exchange Commission are incorporated by reference into Part III of this report.

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PART I

Item 1. Business

Energy Focus Inc. and subsidiaries ("Energy Focus") design, develop, manufacture, and market energy-efficient lighting products, and is a leading provider of turnkey energy-efficient lighting solutions in the governmental and public sector market, general commercial market, and the pool market. Energy Focus' lighting technology offers significant energy savings, heat dissipation and maintenance cost benefits over conventional lighting for multiple applications.

Overview

During 2009, Energy Focus engaged in the design, development, manufacturing, marketing, and installation of energy-efficient lighting systems where the company served two principal markets: commercial/industrial lighting and pool lighting. We completed the initial phase of our new business strategy to provide turnkey, comprehensive energy-efficient lighting solutions, which use, but are not limited to, our patented and proprietary technology. Our solutions include light-emitting diode ("LED"), ceramic metal halide ("CMH"), fiber optic ("EFO"), high-intensity discharge ("HID"), and other highly energy-efficient lighting technologies. Typical savings related to our technology approximates 80% in electricity costs, while providing full-spectrum light closely simulating daylight colors. Our strategy also incorporates continued investment into the research of new and emerging energy sources including, but not limited to, solar energy.

Our long-term strategy is to penetrate the $100 billion existing building lighting market by providing turnkey, comprehensive energy-efficient lighting solutions. We will continue to focus on markets where the benefits of our lighting solutions offerings, combined with our technology, are most compelling. These markets include: schools, universities, hospitals, office buildings, parking garages, supermarkets, museums, cold storage facilities, and manufacturing environments. The passage of the Energy Independence and Security Act of 2007 by Congress created a natural market for our energy-efficient products. Under this Act, all incandescent light bulbs are mandated by federal law to utilize 25% to 30% less energy than today's products by the years 2012 through 2014. Since many of our products are already 80% more efficient than incandescent bulbs, our focus is to increase the public's awareness and knowledge of our technology and to establish comprehensive distribution channels so that demand can be fulfilled quickly. Furthermore, the passage of the American Recovery and Reinvestment Act of 2009 by Congress authorizes the usage of $38 billion in government funds for the advancement of energy conservation programs and $20 billion in tax incentives for renewable energy and efficiency. Provisions of this Act, which have the greatest opportunity to benefit our company include:

- $2.0 billion in loans to subsidize renewable energy projects,
- $4.5 billion toward smart grid technologies to run the power grid more efficiently,
- $6.3 billion in state energy-efficient and clean-energy grants, and
- $4.5 billion to make federal buildings more energy efficient.

Our company's development of solar technology is continuing through our leadership role in the United States government's Very High Efficiency Solar Cell ("VHESC") Consortium sponsored by the Defense Advanced Research Projects Agency ("DARPA"). The goal of the VHESC project is to develop a 40% or greater efficient solar cell for United States military applications, which would also be available to the public for commercial application.

During 2009, we made major progress in our restructuring plan focused on repositioning the company for growth and profitability. This plan involves four major areas of focus which include:

- Dramatic reduction of unabsorbed manufacturing and fixed overhead costs.
- Divesting of our non-strategic business units. In December 2009, we announced the sale of our German subsidiary, LBM Lichtleit Fasertechnik ("LBM"). We are currently investigating potential opportunities to divest of one or more of our remaining legacy businesses.
- Leveraging our fundamental intellectual property and government research to create extremely energy-efficient illumination products for existing buildings. The company is currently developing an intelligent LED lamp to replace linear fluorescent lamps for general illumination. The LED replacement lamp is designed to reduce energy consumption by more than 80% while delivering superior lighting qualities.
- Establishing a national sales and delivery vehicle into the existing building market through the acquisition of lighting retrofit companies. On December 31, 2009, we completed the acquisition of Stones River Companies, LLC ("SRC"). SRC is a well established lighting retrofit company that services, primarily, the Southeastern region of the United States. We anticipate growth through expansion of SRC's geographical coverage and, possibly, through one or more subsequent acquisitions across the United States.

We market our products and services through multiple sales channels and subsidiaries. The following is a brief summary of each unit:

Business Unit: Stones River Companies, LLC.
Offerings: Application design, engineering, project management, and turnkey lighting and solar retrofits.
Target Market: Energy Services Companies ("ESCO's") selling into public sector existing buildings such as: schools, universities, hospitals, and public office buildings at the federal, state and local level.

Business Unit: Energy Focus Government Contracts and Sales
Offerings: Solid state lighting technologies and products to the United States Military.
Target Market: United States Navy, United States Army, and any other Federal Military unit.

Business Unit: Fiberstars Pool and Spa
Offerings: Decorative lighting and related products to the United States pool market.
Target Market: United States pool new construction market and existing market upgrades.

Business Unit: Fiberstars Commercial
Offerings: Decorative architectural lighting products including LED and fiber optic technologies.
Target Market: New commercial building decorative lighting market in North America.

Business Unit: Energy Focus National Accounts
Offerings: Premier energy-efficient lighting products and turnkey energy solutions.
Target Market: Corporate accounts, distribution centers, warehouses, manufacturing, food and clothing retail, and cold storage.

Business Unit: Crescent Lighting Limited
Offerings: Decorative and specialty lighting products including LED and fiber optic technologies.
Target Market: New commercial building decorative lighting market in Europe, Asia, and the Middle East.

Products

In 2009, we produced, sourced, and/or marketed a wide variety of lighting technologies to serve two general markets: commercial lighting and pool lighting. Our offerings include the following products:

- Metal Halide and LED fiber optic lighting systems (e.g. EFO™-Downlighting, E-Luminator™),
- LED MR-16/Par halogen track replacement fixtures,
- LED cold storage globe lamps,
- LED lamps and fixtures (e.g. pool "PAL" lights),
- LED docklights,
- HID high bay fixtures,
- Fluorescent fixtures,
- LED landscape fixtures, and
- LED parking garage lamps and fixtures.

In addition, we also produced customized components such as underwater lenses, color-changing LED lighting fixtures, landscape lighting fixtures, and lighted water features, including waterfalls and laminar-flow water fountains. Furthermore, we continue to aggressively penetrate the government and military lighting markets. In this regard, our company has many products being actively marketed to the United States federal government agencies through the General Services Administration website, https://www.GSAAdvantage.gov.

The key features of our products are as follows:

- Many of our products meet the lighting efficiency standards mandated for the year 2020.
- Our products qualify for federal and state tax incentives for commercial and residential consumers in certain states.
- Many of our products make use of proprietary optical and electronics delivery systems which enable high efficiencies with superior lighting qualities.

Long-Term Strategy

Against the backdrop of a weakened domestic and world economy, and mindful of our historical financial results, we have re-examined our strengths and weaknesses as well as our long-term strategy. Our strengths, which provide a strategic competitive advantage, include the following:

- fundamental intellectual property and trade secrets in non-imaging optics and coatings,
- a broad and intimate understanding of lighting technologies,
- proven ability to develop systems which efficiently create, transport, and display light,
- a superior understanding of the existing building market and the evolution towards “green” lighting products and energy-efficient lighting systems,
- core competencies in execution of all facets of solutions sales, and
- strong relationships with the federal government for research and development.

To capitalize on those strengths and regress from areas where we lack a strategic competitive advantage, we have accelerated our transition to a fully-integrated energy-efficient lighting system and solutions provider by taking the following actions:

- Intensifying our focus on the existing building market. On December 31, 2009, we completed our acquisition of SRC to obtain a sales and delivery vehicle into the public sector existing building market,
- Developing mainstream lighting technologies that directly compete against linear fluorescent general illumination lamps,
- Exploring the potential divestiture of business units such as our Fiberstars pools and United States commercial businesses, and
- Continuing to reduce our operating expenses.

We expect that these actions will result in the following outcomes:

- The acquisition of SRC has already shown a positive impact to our cash flow and will yield significant net sales growth,
- Our cost reduction initiatives, coupled with the sale of non-strategic business units and additional selected financing facilities, will provide adequate operating funds for organic growth,
- The formation of a streamlined organization that is focused on creating economic value through turnkey energy-efficient lighting system and solutions for existing building owners,
- Development of mainstream lighting products for the existing building market that are not currently available and are differentiated by their performance, energy consumption, longevity, and controllability, and
- A platform for continued growth within the public building sector through the acquisition of SRC. This will allow us to take advantage of the opportunity created by the federal government stimulus package in public sector markets.

Sales, Marketing, and Distribution of our Offerings Portfolio

Products

Our products are sold through a combination of direct sales employees, independent sales representatives, and various distributors in different geographic markets throughout the world. Our distributors’ obligation to us is not contingent upon the resale of our products and as such does not prohibit revenue recognition. We will also distribute our products through our newly acquired SRC subsidiary.

Within the commercial and pool lighting business units, we continue to focus on general contractors and specifiers especially in the retail, hospitality, museum and health care markets. Our lighting retrofit subsidiary, SRC, is heavily targeting the existing public building market and will generate enormous benefits by utilizing our products for quick, energy-efficient upgrades.

Solutions

Our solutions-based sales are designed to enhance total value by providing turnkey, high-quality, energy-efficient lighting application alternatives that positively impact customers’ profitability, the environment, and the communities we serve. These solutions are sold through our direct sales employees as well as our SRC subsidiary and include not only our proprietary energy-efficient lighting solutions, but also sourced lighting systems, energy audits, and service agreements.

Within the solutions business unit, we are focusing on multi-location food retailers, cold storage facilities, retailers, museums, and industrial/commercial real estate companies. Our recent successes include projects at a major real estate developer in Ohio as well as several cold storage facilities. Through SRC we are also targeting the existing public building market particularly health care and hospitals, schools and universities, government and municipalities, museums, hospitality, and casinos, as well as industry and manufacturing. SRC’s direct customers are large national ESCO’s that provide energy-efficient upgrades around the country.

As of December 31, 2009, we had approximately 91 sales and independent sales representatives throughout the United States and United Kingdom.

Our ten largest customers accounted for approximately 33.4% of our net sales from continuing operations for the twelve months ended December 31, 2009. In 2009, there was no single customer who accounted for more than 10.0% of net sales.

Manufacturing and Suppliers

In 2009, we produced our lighting systems through a combination of internal and outsourced manufacturing and assembly operations. Our internal lighting system manufacturing consisted primarily of fiber processing, final assembly, testing, and quality control. We used independent contractors to manufacture some components and sub-assemblies and have worked with a number of our vendors to design custom components to meet our specific needs. We manage inventories of domestically produced component parts on a just-in-time basis when practicable. Our quality assurance program provides for testing of all sub-assemblies at key stages in the assembly process as well as testing of finished products. In the fourth quarter, 2009, we completed the relocation of our Solon, Ohio manufacturing and assembly operation to our Mexican contract manufacturing operation in order to reduce our cost structure and eliminate redundant manufacturing capabilities.

Many of our products are manufactured by third-party suppliers resulting in significant cost savings. Under a Production Share Agreement initiated in 2003 and renewed in August 2007, we conduct contract manufacturing and assembly in Mexico through North American Production Sharing, Inc. and Industrias Unidas de BC, SA de CV ("NAPS"). Under this agreement, NAPS provides administrative and manufacturing services, including labor services and the use of manufacturing facilities in Mexico, for the manufacturing and assembly of certain fiber optics and LED lighting systems, equipment, and related components. We also perform final assembly of products acquired from Australia, India, Japan, and Taiwan. These suppliers generally supply products on a purchase order basis.

Research and Development

Research and development has remained a key focus of our company; accordingly, we have committed substantial resources to this endeavor. Our research and development team is dedicated to continuous improvement and innovation of our current lighting technologies, including fiber optics, LED, and HID systems. Furthermore, our research and development team plays a leading role in the United States government's VHESC Consortium sponsored by DARPA. The purpose of the VHESC project is to develop an extremely high-efficiency solar cell for United States military applications, which would also be available for commercial application.

Research and development expense, net of credits from the government, for the years ended December 31, 2009, 2008, and 2007 were $319,000, $237,000 and $2,611,000, respectively.

Our recent achievements include:

2009: In March, 2009, the Department of Defense selected Energy Focus to receive a Phase I Small Business Innovative Research ("SBIR") Grant to begin the development of a "Solid State Infrared Replacement for the M-278 Flare" for the United States Army's Hydra Rocket System. In July, 2009, the Naval Research Warfare Center awarded us a $1,400,000 contract to develop and produce solid state lighting fixtures for use on Virginia Class attack submarines. In August, 2009, DARPA awarded us a $500,000 SBIR extension grant to develop and produce solid state lighting fixtures for general use on United States Navy ships. In September, 2009, we entered into a $3,100,000 contract with the VHESC Consortium to deliver advanced optics research to enable development of high-efficiency, low-cost photovoltaic-based solar cells. Also in September, we entered into a $100,000 Agreement with the Department of Energy for a Phase I SBIR project to investigate methods of using coatings to improve color consistency for Metal Halide lamps. In October, 2009, we entered into an additional $100,000, twelve-month contract with the VHESC Consortium to continue advanced solar research on low-cost energy-efficient spectrum splitting technologies.

2008: In November, 2008, the United States Department of Energy named Energy Focus an Energy Star Partner. Energy Star is a joint program of the United States' Environmental Protection Agency and Department of Energy helping Americans save money and protect the environment through energy-efficient products and practices. Also in November, DARPA, through their SBIR Program, awarded us a contract to develop Explosion Proof LED fixtures. In December, 2008, the DARPA SBIR Program awarded us a contract to develop berth lighting systems that will effectively reset a sailor's body clock for environments where the natural circadian rhythm is frequently disrupted. The two DARPA SBIR contracts are for a total of $198,000. Also in December, we installed high-efficiency lighting fixtures to retrofit 100% of the high-bay lighting in a hangar deck on board an Arleigh Burke class Naval Destroyer. This installation followed a year-long demonstration on board naval vessels that replaced existing fluorescent, incandescent, and halogen lighting with various LED lighting solutions.

2007: In August, 2007, the VHESC Consortium reported a world record 42.9% conversion efficiency on photovoltaic devices. Energy Focus is a member of this consortium, and these solar cells make use of our proprietary optics technology. In November, 2007, we were awarded a $1,000,000 contract with E.I. DuPont de Nemours and Company to develop advanced solar cell technologies. Additionally, we were awarded additional Phase II contracts for two DARPA SBIR projects to research lamp coating technologies and an extruded, large-core fiber processing method. The two DARPA SBIR Phase II contracts were for a total of $1,500,000. Lastly, we were awarded the prestigious DARPA Tech Award for Excellence in recognition of our outstanding achievement for bridging the technology gap between inefficient traditional light sources and advanced high-efficiency light systems.

Intellectual Property

We have a policy of seeking to protect our intellectual property through patents, license agreements, trademark registrations, confidential disclosure agreements, and trade secrets, as management deems appropriate. As of December 31, 2009 and March 8, 2010, our intellectual property portfolio consisted of 68 and 69, respectively, issued United States and foreign patents, various pending United States patent applications, and various pending Patent Cooperation Treaty patent applications filed with the World Intellectual Property Organization that serves as the basis of national patent filings in countries of interest. A total of 15 applications are pending. Our issued patents expire at various times between January, 2013 and June, 2030. Generally, the term of patent protection is twenty years from the earliest effective filing date of the patent application. There can be no assurance, however, that our issued patents are valid or that any patents applied for will be issued. There can be no assurance that our competitors or customers will not copy aspects of our lighting systems or obtain information that we regard as proprietary. There can also be no assurance that others will not independently develop products similar to ours. The laws of some foreign countries in which we sell or may sell our products do not protect proprietary rights to products to the same extent as do the laws of the United States.

We are aware that a large number of patents and pending patent applications exist in the field of fiber optic technology and LED lighting. We are also aware that certain competitors hold and have applied for patents related to fiber optic lighting and LED lighting. Although, to date, we have not been involved in litigation challenging our intellectual property rights, we have, in the past, received communications from third parties asserting rights over our patents or that our technology infringes upon intellectual property held by such third parties. On January 29, 2010, a competitor and former supplier filed a complaint against our company in the Court of Chancery of the State of Delaware, alleging that the company has misused proprietary trade secrets, breached a contract, and engaged in deceptive trade practices relating to one of our lighting products. The complaint seeks injunctive relief and damages. We are currently preparing to answer the complaint, but have not yet done so. We strongly deny any impropriety, believe that the complaint is without merit, and intend to vigorously defend ourselves. In our management’s opinion, this lawsuit should not have an adverse effect on our financial condition, cash flows, or results of operations.

We are not currently engaged in any other litigation, and do not anticipate becoming involved in any in the foreseeable future. However, we may be required to engage in litigation to protect our patent rights or to defend against the claims of others. There can be no assurance that third parties will not assert additional claims that our products infringe upon third-party patents or other intellectual property rights or that, in case of a dispute, licenses to such technology will be available, if at all, on reasonable terms. In addition, we may need to take further legal action to enforce our intellectual property rights in the future. In the event of litigation to determine the validity of any third-party claims or claims by us against third parties, such litigation, whether or not determined in our favor could result in significant expense to us and divert the efforts of our technical and management personnel from productive tasks. Also, in the event of an adverse ruling in such litigation, we might be required to expend significant resources to develop non-infringing technology or to obtain licenses to the infringing technology, and the licenses may not be available on acceptable terms. In the event of a successful claim against us and our failure to develop or license a substitute technology, our operating results could be adversely affected.

Backlog

We typically ship standard products within a few days after receipt of order. Custom products are shipped within 30-60 days of receipt of order. Generally, there is not a significant backlog of orders except at year-end. Our products-based backlog at the end of 2009 was $859,000, compared to $860,000 at the end of 2008. Awarded contracts assumed through our acquisition of SRC totaled approximately $7,238,000. Recognized revenues from these contracts will occur over the course of 2010 and are recognized as the services are being performed or the materials are delivered. Historically, materials have accounted for 50% of the total recognized project revenues and auditing and engineering costs have accounted for 10% of the total recognized project revenues. The remaining project revenues are recognized on a percentage of completion basis as installation occurs.

Competition

Our commercial lighting products compete against a variety of lighting products, including conventional light sources such as: incandescent light bulbs, metal halide lamps, LEDs, compact fluorescent lamps, other fiber optic lighting systems, and decorative lighting technologies. Our ability to compete depends substantially upon the superior performance and lower lifecycle cost of our products and services. Principal competitors in our markets include: large lamp manufacturers, lighting fixture companies, distributors, lighting retrofit companies, and ESCO's whose financial resources substantially exceed ours. These competitors may introduce new or improved products that may reduce or eliminate some of the competitive advantage of our products. The company anticipates that the primary competition to our systems will come from new technologies that offer increased energy efficiency, lower maintenance costs and/or lower heat radiation. In certain applications, we compete with LED systems produced by large lighting companies such as Philips and General Electric. In traditional commercial lighting applications, we compete primarily with local and regional lighting manufacturers that, in many cases, are more established in their local markets than our company. In traditional commercial lighting, fiber optic lighting products are offered by a number of smaller companies, some of which compete aggressively on price. Some of these competitors offer products with performance characteristics similar to those of our products. Additionally, some conventional lighting companies now manufacture or license fiber optic lighting systems that compete with our products. Selected companies that compete with us in Asia include Phillips, Mitsubishi, Bridgestone, and Toray.

Our pool lighting products compete with other sources of in-pool lighting, including colored and color-changing underwater lighting, and pool accent lighting. Principal competitive factors include: price, performance, ease of installation, and maintenance requirements.

In the pool lighting market, we face competition from suppliers and distributors who bundle lighting and non-lighting products and sell these packages to pool builders and installers. In addition, we face competition directly from manufacturers who produce their own lighting systems and components. For example, in this market, competitive products are offered by Pentair's American Products Division, a major manufacturer of pool equipment and supplies, as well as the Pool and Spa division of Nexxus Lighting, Inc. In the spa lighting business, spa manufacturers install LED lighting systems during the manufacturing process. We intend to develop new lighting products that are complementary to traditional pool lights currently sold by pool equipment suppliers. To maximize the sales of these new products, we continue to leverage our well-established presence in the domestic pool lighting market and are expanding into the international pool lighting market.

The market for lighting energy solutions is fragmented and differs in the public and private sector markets. Serving the private sector markets, our National Accounts solutions business competes against in-house resources, electrical contractors, traditional lighting fixture manufacturers and non-traditional ESCO's that are focused on commercial and industrial customers. In the public sector, our SRC solutions business competes against other lighting retrofit companies, as well as some traditional ESCO's that self-perform the lighting component of their projects. In both markets, we compete primarily on the basis of financial impact, technology, light quality and design, client relationships, lighting application knowledge, energy efficiency, customer service, and marketing support.

Employees

As of December 31, 2009, we had 78 full-time associates, 18 of whom are located in the United Kingdom and 60 in the United States.

None of our associates are subject to any collective bargaining agreement.

Business Segment

In 2009, we operated in a single industry segment where we serve two principal markets; commercial/industrial lighting and pool lighting. We marketed our products for worldwide distribution primarily through independent sales representatives and distributors in North America, Europe, and the Far East.

Available Information

Our Web site is located at http://www.efoi.com. We make available free of charge, on or through our Web site, our annual, quarterly, and current reports, as well as any amendments to those reports, as soon as reasonably practicable after electronically filing such reports with the Securities and Exchange Commission ("SEC"). Information contained on our Web site is not part of this report.

FORWARD-LOOKING STATEMENTS

When used in this report, the words “expects,” “anticipates,” “estimates,” “plans,” “intends,” and similar expressions are intended to identify forward-looking statements. These statements include, but are not limited to, statements as to our competitive position; future operating results; net sales growth; expected operating expenses and capital expenditures; gross product margin improvement; sources of net sales; anticipated credits from government contracts; product development and enhancements; liquidity and cash reserves; our reliance upon a limited number of customers; our accounting policies; the effect of recent accounting announcements; the development and marketing of new products; relationships with customers and distributors; relationships with, dependence upon, and the ability to obtain components from suppliers; as well as our remarks concerning our ability to compete in the fiber optic lighting market; the evolution and future size of the fiber optic lighting market; seasonal fluctuations; plans for and expected benefits of outsourcing and offshore manufacturing; trends in the price and performance of fiber optic lighting products; the benefits and performance of our lighting products; the adequacy of our current facilities; our strategy with regard to protecting our proprietary technology; our ability to retain qualified employees; and the risks set forth below under Item 1A, “Risk Factors.” These forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions, or circumstances on which any such statement is based.

EFO®, Fiberstars®, BritePak®, and EFO-Ice® are our registered trademarks. We may also refer to trademarks of other corporations and organizations in this document.

All references to “Energy Focus,” “we,” “us,” “our,” or “the company” means Energy Focus, Inc. and its subsidiaries, except where it is made clear that the term means only the parent company.

Item 1A. Risk Factors

We have a history of operating losses and may incur losses in the future.

We have experienced net losses of $11,015,000 and $14,448,000 for the years ended December 31, 2009 and 2008, respectively. As of December 31, 2009, we had an accumulated deficit of $60,343,000. Although management believes that we have addressed many of the legacy issues that have historically burdened our financial performance, we still face challenges in order to reach profitability. In order for us to attain profitability and growth, we will need to successfully address these challenges, including the continuation of cost reductions throughout our organization, execution of our marketing and sales plans for our new turnkey energy-efficient lighting solutions business, continued evaluation and divestiture of non-core business product lines, and continued improvements in our supply chain performance.

Although we are optimistic about reaching profitability, there is a risk that our business may not be as successful as we envision. Our independent public accounting firm has issued an opinion in our 2009 Annual Report on Form 10-K raising substantial doubt as to our ability to continue as a going concern. This opinion stems from our historically poor operating performance, the on-going global economic crisis, and our historical inability to generate sufficient cash flow to meet obligations and sustain operations without obtaining additional external financing. Although we are optimistic about obtaining the funding necessary for us to continue as a going concern, there can be no assurances that this objective will be successful. We are currently aggressively pursuing the following external funding sources:

- obtain financing and/or grants available through federal, state, and/or local governmental agencies,
- obtain financing from various financial institutions,
- obtain financing from non-traditional investment capital organizations,
- potential sale or divestiture of one or more operating units, and
- obtain funding from the sale of our common stock or other equity instruments.

Obtaining financing through the above-mentioned mechanisms contain risks, including:

- government stimulus and/or grant money is not allocated to us despite our focus on the design, development, and manufacturing of energy-efficient lighting systems,
- loans or other debt instruments may have terms and/or conditions, such as interest rates, restrictive covenants, and control or revocation provisions, which are not acceptable to management or our Board of Directors,
- the current global economic crisis combined with our current financial condition may prevent us from being able to obtain any debt financing,
- financing may not be available for parties interested in pursuing the acquisition of one or more of our operating units, and
- additional equity financing may not be available to us in the current economic environment and could lead to further dilution of shareholder value for current shareholders of record.

Downturns in general economic conditions and construction trends could continue to materially and adversely affect our business.

Downturns in general economic and market conditions, both nationally and internationally, could have a material adverse effect on our business. In most areas, sales of new and existing homes have slowed and there has been a continued downturn in the housing market, as well as adverse changes in employment levels, job growth, consumer confidence and interest rates, in addition to an oversupply of commercial and residential buildings for sale. In our legacy businesses, sales of our lighting products depend significantly upon the level of new building construction, which are affected by housing market trends, interest rates and the weather. Sales of our pool and spa lighting products depend substantially upon the level of new pool construction, which is also affected by housing market and construction trends. In addition, due to the seasonality of construction, sales of swimming pool and lighting products, and thus our revenue and income, have tended to be significantly lower in the first quarter of each year. Our future results of operations may experience substantial fluctuations from period to period as a consequence of these factors, and such conditions and other factors affecting capital spending may affect the timing of orders. An economic downturn coupled with a decline in our net sales could adversely affect our ability to meet our working capital requirements, support our capital requirements and growth objectives, or could otherwise adversely affect our business financial condition, and results of operations. As a result, any general or market-specific economic downturns, particularly those affecting new building construction and renovation, or that cause end-users to reduce or delay their purchases of lighting products, services, or retrofit activities, would have a material adverse effect on our business, cash flows, financial condition, and results of operations.

We have significant international sales and are subject to risks associated with operating in international markets.

For the years ending December 31, 2009 and 2008, net sales of our products outside of the United States represented approximately 36.5% and 35.6%, respectively, of our total net sales from continuing operations. We generally provide technical expertise and limited marketing support, while our independent international distributors generally provide sales staff, local marketing, and product services. We believe our international distributors are better able to service international markets due to their understanding of local market conditions and best business practices. International business operations are subject to inherent risks, including, among others:

- unexpected changes in regulatory requirements, tariffs and other trade barriers or restrictions,
- longer accounts receivable payment cycles and the difficulty of enforcing contracts and collecting receivables through certain foreign legal systems,
- difficulties in managing and staffing international operations,
- potentially adverse tax consequences,
- the burdens of compliance with a wide variety of foreign laws,
- import and export license requirements and restrictions of the United States and each other country in which we operate,
- exposure to different legal standards and reduced protection for intellectual property rights in some countries,
- currency fluctuations and restrictions,
- political, social and economic instability, including war and the threat of war, acts of terrorism, pandemics, boycotts, curtailment of trade or other business restrictions,
- periodic foreign economic downturns, and
- sales variability as a result of transacting our foreign sales in United States dollars.

If we are unable to respond effectively as new lighting technologies and market trends emerge, our competitive position and our ability to generate revenue and profits may be harmed.

To be successful, we will need to keep pace with rapid changes in light-emitting diode (“LED”) and fiber optics lighting technology, changing customer requirements, new product introductions by competitors and evolving industry standards, any of which could render our existing products obsolete if we fail to respond in a timely manner. Development of new products incorporating advanced technology is a complex process subject to numerous uncertainties. We have previously experienced, and could in the future, experience delays in introduction of new products. If effective new sources of light other than LED and fiber optics are discovered, our current products and technologies could become less competitive or obsolete. If others develop innovative proprietary lighting technology that is superior to ours, or if we fail to accurately anticipate technology and market trends, respond on a timely basis with our own development of new products and enhancements to existing products, and achieve broad market acceptance of these products and enhancements, our competitive position may be harmed and we may not achieve sufficient growth in our net sales to attain or sustain profitability.

If we are not able to compete effectively against companies with greater resources, our prospects for future success will be jeopardized.

The lighting industry is highly competitive. In the high performance lighting markets in which we sell our advanced lighting systems, our products compete with lighting products utilizing traditional lighting technology provided by many vendors. Additionally, in the advanced lighting markets in which we have primarily competed to date, competition has largely been fragmented among a number of small manufacturers. However, some of our competitors, particularly those that offer traditional lighting products, are larger companies with greater resources to devote to research and development, manufacturing and marketing.

Moreover, in the general lighting market, we expect to encounter competition from an even greater number of companies. Our competitors are expected to include the large, established companies in the general lighting industry, such as General Electric, Osram Sylvania and Royal Philips Electronics. Each of these competitors has undertaken initiatives to develop LED technology. These companies have global marketing capabilities and substantially greater resources to devote to research and development and other aspects of the development, manufacture and marketing of LED lighting products than we possess. We may also face competition from traditional lighting fixture companies, such as Acuity Brands Lighting, Cooper Lighting, Hubbell Lighting, Lithonia Lighting, and Royal Philips Electronics. The relatively low barriers to entry into the lighting industry and the limited proprietary nature of many lighting products also permit new competitors to enter the industry easily.

In each of our markets, we also anticipate the possibility that LED manufacturers, including those that currently supply us with LEDs, may seek to compete with us. Our competitors’ lighting technologies and products may be more readily accepted by customers than our products. Additionally, to the extent that competition in our markets intensifies, we may be required to reduce our prices in order to remain competitive. If we do not compete effectively, or if we reduce our prices without making commensurate reductions in our costs, our net sales and profitability, and our future prospects for success, may be harmed.

We have made strategic acquisitions in the past and intend to do so in the future, which may adversely affect our operating results, financial condition, and existing business.

We seek to grow through strategic acquisitions in order to transition our company into a nationwide, turnkey energy-efficient lighting systems solutions company. On December 31, 2009, we acquired Stones River Companies, LLC ("SRC"), and we anticipate making additional acquisitions in the future. The success of our acquisition strategy will depend on, among other things:

- the availability of suitable candidates,
- competition from other companies for the purchase of available candidates,
- our ability to value those candidates accurately and negotiate favorable terms for those acquisitions,
- the availability of funds to finance acquisitions,
- the ability to establish new informational, operational and financial systems to meet the needs of our business,
- the ability to achieve anticipated synergies, including with respect to complementary products or services, and
- the availability of management resources to oversee the integration and operation of the acquired businesses.

If we are not successful in integrating acquired businesses and completing acquisitions in the future, we may be required to reevaluate our acquisition strategy. We also may incur substantial expenses and devote significant management time and resources to completing these acquisitions. Furthermore, acquired businesses may fail to meet our performance expectations. If we do not achieve the anticipated benefits of an acquisition as rapidly as expected, or at all, investors or analysts may not perceive the same benefits of the acquisition as we do. If these risks materialize, our performance and stock price could be materially affected.

Our inability to successfully integrate businesses we acquire could have adverse consequences on our business.

Acquisitions may result in greater administrative burdens and operating costs and, to the extent financed with debt, additional interest costs. We cannot assure you that we will be able to manage or integrate acquired companies or businesses successfully. The process of integrating acquired businesses, including the recent acquisition of SRC, may be disruptive to our business and may cause an interruption of or a loss of momentum in, our business as a result of the following factors, among others:

- loss of key employees or customers,
- possible inconsistencies in standards, controls, procedures and policies among the combined companies and the need to implement company-wide financial, accounting, information and other systems,
- failure to maintain the quality of services that the companies have historically provided,
- coordinating sales, distribution, and marketing functions,
- the need to coordinate geographically diverse organizations, and
- the diversion of management's attention from our day-to-day business as a result of the need to deal with any disruptions and difficulties and the need to add management resources to do so.

These disruptions and difficulties, if they occur, may cause us to fail to realize the cost savings, revenue enhancements and other benefits that we may expect from such acquisitions and may cause material adverse short- and long-term effects on our operating results and financial condition.

If we are unable to obtain and adequately protect our intellectual property rights, our ability to commercialize our products could be substantially limited.

We consider our technology and processes proprietary. If we are not able to adequately protect or enforce the proprietary aspects of our technology, competitors may utilize our proprietary technology and our business, financial condition and results of operations could be adversely affected. We protect our technology through a combination of patent, copyright, trademark and trade secret laws, employee and third-party nondisclosure agreements and similar means. Despite our efforts, other parties may attempt to disclose, obtain or use our technologies. Our competitors may also be able to independently develop products that are substantially equivalent or superior to our products or slightly modify our patents. In addition, the laws of some foreign countries do not protect our proprietary rights as fully as do the laws of the United States. As a result, we may not be able to protect our proprietary rights adequately in the United States or abroad.

As of December 31, 2009 and March 8, 2010, our intellectual property portfolio consisted of 68 and 69, respectively, issued United States and foreign patents, various pending United States patent applications, and various pending Patent Cooperation Treaty patent applications filed with the World Intellectual Property Organization that serves as the basis of national patent filings in countries of interest. A total of 15 applications are pending. Because our patent position involves complex legal, scientific, and factual questions, the issuance, scope, validity and enforceability of our patents cannot be predicted with certainty. Our issued patents may be invalidated or their enforceability challenged, and they may not provide us with competitive advantages against others with similar products and technology. Furthermore, others may independently develop similar products or technology or duplicate or design around any technologies that we have developed.

We may receive notices that claim we have infringed upon the intellectual property of others. Even if these claims are not valid, they could subject us to significant costs. We have engaged in litigation and litigation may be necessary in the future to enforce our intellectual property rights or to determine the validity and scope of the proprietary rights of others. Litigation may also be necessary to defend against claims of infringement or invalidity by others. An adverse outcome in litigation or any similar proceedings could subject us to significant liabilities to third parties, require us to license disputed rights from others or require us to cease marketing or using certain products or technologies. We may not be able to obtain any licenses on acceptable terms, if at all. We also may have to indemnify certain customers if it is determined that we have infringed upon or misappropriated another party's intellectual property.

Any of these results could adversely affect our business, financial condition and results of operations. In addition, the cost of addressing any intellectual property litigation claim, both in legal fees and expenses, and the diversion of management resources, regardless of whether the claim is valid, could be significant and could materially harm our business, financial condition and results of operations.

If critical components that we currently purchase from a small number of third-party suppliers become unavailable or third-party manufacturers otherwise experience delays, we may incur delays in shipment, which would damage our business.

We depend on others to manufacture a significant portion of the component parts incorporated into our products. We purchase our component parts from third-party manufacturers that serve the advanced lighting systems market and believe that alternative sources of supply are readily available for most component parts. However, consolidation in the lighting industry could result in one or more current suppliers being acquired by a competitor, rendering us unable to continue purchasing necessary amounts of key components at competitive prices.

In an effort to reduce manufacturing costs, we have outsourced the production of certain parts and components as well as finished goods in our product lines to a number of overseas suppliers. We expect to outsource all of the production for selected products. While we believe alternative sources for the production of these products are available, we have selected these particular manufacturers based on their ability to consistently produce these products per our specifications ensuring the best quality product at the most cost effective price. We depend on our suppliers to satisfy performance and quality specifications and to dedicate sufficient production capacity within scheduled delivery times. Although we maintain contracts with selected suppliers, we may be vulnerable to unanticipated price increases and product shortages. Accordingly, the loss of all or one of these suppliers or delays in obtaining shipments could have a material adverse effect on our operations until such time as an alternative supplier could be found. We may be subject to various import duties applicable to materials manufactured in foreign countries and, in addition, may be affected by various other import and export restrictions, as well as other considerations or developments impacting upon international trade, including economic or political instability, shipping delays, and product quotas. These international trade factors will, under certain circumstances, have an impact both on the cost of components, which will, in turn, have an impact on the cost to us of the manufactured product, and the wholesale and retail prices of its products.

If the companies to which we outsource the manufacture of our products fail to meet our requirements for quality, quantity and timeliness, our revenue and reputation in the marketplace could be harmed.

We outsource a significant portion of the manufacture and assembly of our products and we expect to outsource all of the production of many of our products. We currently depend on a small number of contract manufacturers to manufacture our products at plants in various locations throughout the world, primarily in the United States, Mexico, China, and Taiwan. These manufacturers supply most of the necessary raw materials and provide all necessary facilities and labor to manufacture our products. We currently do not have long-term contracts with some of these manufacturers. If these companies were to terminate their arrangements with us without adequate notice, or fail to provide the required capacity and quality on a timely basis, we would be unable to manufacture and ship our lighting products until replacement manufacturing services could be obtained. To qualify a new contract manufacturer, familiarize it with our products, quality standards and other requirements, and commence volume production is a costly and time-consuming process. If it became necessary to do so, we may not be able to establish alternative manufacturing relationships on acceptable terms.

Our reliance on contract manufacturers involves certain additional risks, including the following:

- lack of direct control over production capacity and delivery schedules,
- lack of direct control over quality assurance, manufacturing yields and production costs,
- risk of loss of inventory while in transit from China, Mexico, India, Japan, and Taiwan, and
- risks associated with international commerce, particularly with China, Mexico, India, Japan, and Taiwan, including unexpected changes in legal and regulatory requirements, changes in tariffs and trade policies, risks associated with the protection of intellectual property and political and economic instability.

Any interruption in our ability to manufacture and distribute products could result in delays in shipment, lost sales, reductions in revenue and damage to our reputation in the market, all of which would adversely affect our business.

We depend on independent distributors and sales representatives for a substantial portion of our net sales, and the failure to manage successfully our relationships with these third parties, or the termination of these relationships, could cause our net sales to decline and harm our business.

We rely significantly on indirect sales channels to market and sell our products. Most of our products are sold through third-party independent distributors and sales representatives. In addition, these parties provide technical sales support to end-users. Our current agreements within these sales channels are non-exclusive with regard to lighting products in general, but exclusive with respect to LED lighting and fiber optic products. We anticipate that any such agreements we enter into in the future will be on similar terms. Furthermore, our agreements are generally short-term, and can be cancelled by these sales channels without significant financial consequence. We cannot control how these sales channels perform and cannot be certain that we or end-users will be satisfied by their performance. If these distributors and sales representatives significantly change their terms with us, or change their historical pattern of ordering products from us, there could be a significant impact on our net sales and profits.

Our products could contain defects or they may be installed or operated incorrectly, which could reduce sales of those products or result in claims against us.

Despite product testing, defects have been found and may be found in our existing or future products. This could result in, among other things, a delay in the recognition or loss of net sales, loss of market share or failure to achieve market acceptance. These defects could cause us to incur significant warranty, support and repair costs, divert the attention of our engineering personnel from our product development efforts and harm our relationship with our customers. The occurrence of these problems could result in the delay or loss of market acceptance of our lighting products and would likely harm our business. Some of our products use line voltages (such as 120 or 240 AC), or are designed for installation in environments such as swimming pools and spas, which involve enhanced risk of electrical shock, injury or death in the event of a short circuit or other malfunction. Defects, integration issues or other performance problems in our lighting products could result in personal injury or financial or other damages to end-users or could damage market acceptance of our products. Our customers and end-users could also seek damages from us for their losses. A product liability claim brought against us, even if unsuccessful, would likely be time consuming and costly to defend.

If we are unable to attract or retain qualified personnel, our business and product development efforts could be harmed.

To a large extent, our future success will depend on the continued contributions of certain employees, such as our current Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, President, and Chief Technical Officer. These and other key employees would be difficult to replace. Our future success will also depend on our ability to attract and retain qualified technical, sales, marketing and management personnel, for whom competition is very intense. The loss of, or failure to attract, hire, and retain, any such persons could delay product development cycles, disrupt our operations, or otherwise harm our business or results of operations. We have been successful in hiring experienced energy solutions salespeople from leading firms in the industry but if these individuals are not successful in achieving our expectations, and then planned sales may not occur and the anticipated net sales may not be realized.

A significant portion of our business is dependent upon the existence of government funding, which may not be available into the future and could result in a significant reduction in sales and could cause significant harm to our business.

Over the last three years, approximately 40.7% of our research and development efforts have been supported directly by government funding. In 2009, approximately 70.5% of our research and development funding came from government sources and was contracted for short periods, usually one to two years. Further, a significant portion of net sales generated by SRC are derived from state government funding and supported by federal government funding. If government funding is reduced or eliminated, there is no guarantee that we would be able to continue to fund our activities in these areas at their current levels, if at all. If we are unable to maintain our access to government funding in these areas, there could be a significant impact on our net sales and profits.

We believe that certification and compliance issues are critical to adoption of our lighting systems, and failure to obtain such certification or compliance would harm our business.

We are required to comply with certain legal requirements governing the materials in our products. Although we are not aware of any efforts to amend any existing legal requirements or implement new legal requirements in a manner with which we cannot comply, our net sales might be adversely affected if such an amendment or implementation were to occur.

Moreover, although not legally required to do so, we strive to obtain certification for substantially all our products. In the United States, we seek, and to date have obtained, certification on substantially all of our products from Underwriters Laboratories ("UL") or Intertek ("ETL"). Where appropriate in jurisdictions outside the United States and Europe, we seek to obtain other similar national or regional certifications for our products. Although we believe that our broad knowledge and experience with electrical codes and safety standards have facilitated certification approvals, we cannot ensure that we will be able to obtain any such certifications for our new products or that, if certification standards are amended, that we will be able to maintain such certifications for our existing products. Moreover, although we are not aware of any effort to amend any existing certification standard or implement a new certification standard in a manner that would render us unable to maintain certification for our existing products or obtain ratification for new products, our net sales might be adversely affected if such an amendment or implementation were to occur.

We must comply with regulatory requirements regarding internal control over financial reporting, corporate governance and public disclosure, which will cause us to incur significant costs and our failure to comply with these requirements could cause our stock price to decline.

Section 404 of the Sarbanes-Oxley Act of 2002 requires that we annually evaluate and report on our systems of internal controls. These rules and regulations have increased our legal and compliance costs and made certain activities more time-consuming and costly. In the future, there may be material weaknesses in our internal controls that would be required to be reported in future Annual Reports on Form 10-K and/or Quarterly Reports on Form 10-Q. A negative reaction by the equity markets to the reporting of a material weakness could cause our stock price to decline. In addition, if we acquire a company with weak internal controls, it will take time to improve the internal controls of the acquired company to a satisfactory level of operating effectiveness. Any failure to improve an acquired company's financial systems could result in delays or inaccuracies in reporting financial information.

We have not been in compliance with the continued listing requirements of the NASDAQ Global Market.

From time to time during the last several months, we have not met the NASDAQ Global Market ("NASDAQ") continued listing requirement that calls for the maintenance of a minimum bid price of our common stock of $1.00 per share. We received a formal notice of non-compliance from NASDAQ. Although we have regained compliance with NASDAQ continued listing requirements, there is a risk that our stock could again become non-compliant with this listing requirement. If our common stock bid price does not meet NASDAQ's minimum requirement to remain on the Global Market, we will be required to either revalue existing shares of common stock or perform other necessary remedial actions. If we are unable to maintain the minimum common stock bid price for trading on NASDAQ, trading in our common stock, if any, could then be conducted on the NASDAQ Capital Market, in the over-the-counter market or on the OTC Bulletin Board system. Movement to these markets could result in a reduction of trading liquidity.

We could issue additional common stock, which might dilute the book value of our common stock.

Our Board of Directors has the authority, without action or vote of our shareholders, to issue all or a part of our authorized but unissued shares. Such stock issuances could be made at a price that reflects a discount or a premium from the then-current trading price of our common stock. In addition, in order to raise capital or acquire businesses in the future, including future lighting retrofit businesses, we may need to issue securities or promissory notes that are convertible or exchangeable for shares of our common stock. These issuances would dilute shareholders' percentage ownership interest, which would have the effect of reducing influence on matters on which our shareholders vote, and might dilute the book value of our common stock. Shareholders may incur additional dilution if holders of stock options, whether currently outstanding or subsequently granted, exercise those options, or if warrant holders exercise warrants purchasing shares of our common stock. If an insufficient amount of authorized, but unissued, shares of common stock exists to issue in connection with a subsequent equity financing or acquisition transactions, we may be required to call a special meeting of our shareholders to authorize additional shares before undertaking, or as a condition to completing a financing or acquisition transaction.

We may need to request our shareholders to authorize additional shares of common stock in connection with subsequent equity finance or acquisition transactions.

We are authorized to issue 30,000,000 shares of common stock, of which approximately 21,370,304 shares are issued and outstanding, as of March 26, 2010. An additional 7,310,000 shares have been reserved for issuance upon exercise of stock options and warrants outstanding and under our Purchase agreement with the Lincoln Park Capital Fund, LLC. If we require additional shares of common stock in connection with a subsequent equity financing or acquisition transaction, we may be required to call a special meeting of our shareholders to authorize additional shares before undertaking or as a condition to completing an offering or transaction. We cannot be assured that our shareholders would authorize an increase in the number of shares of our common stock.

Shares eligible for future sale may adversely affect the market for our common stock.

As of December 31, 2009, we had a significant number of convertible or derivative securities outstanding, including: (i) 1,721,000 shares of common stock issuable upon exercise of outstanding stock options at a weighted average exercise price of $3.63 per share, and (ii) 4,438,000 shares of common stock issuable upon exercise of our outstanding warrants at a weighted average exercise price of $1.76 per share. If or when these securities are exercised into shares of our common stock, the number of our shares of common stock outstanding will increase. Increases in our outstanding shares, and any sales of shares, could have an adverse affect on the trading activity and market price of our common stock.

In addition, from time to time, certain of our shareholders may be eligible to sell all, or a portion of, their shares of common stock by means of ordinary brokerage transactions in the open market pursuant to Rule 144, promulgated under the Securities Act of 1933, or under effective resale prospectuses. Any substantial sale of our common stock pursuant to Rule 144 or any resale prospectus may have an adverse affect on the market price of our securities.

As a "thinly-traded" stock, large sales can place negative pressure on our common stock price.

Our common stock, despite certain increases of trading volume from time to time, experiences periods when it could be considered "thinly-traded." Financing or acquisition transactions resulting in a large number of newly issued shares that become immediately tradable, or other events that cause current shareholders to sell shares, could place negative pressure on the trading price of our stock. In addition, the lack of a robust secondary market may require a shareholder who desires to sell a large number of shares to sell those shares in increments over time in order to mitigate any adverse impact of the sales on the market price of our common stock.

We may be subject to legal claims against us or claims by us which could have a significant impact on our resulting financial performance.

At any given time, we may be subject to litigation, the disposition of which may have an adverse affect upon our business, financial condition, or results of operation. Information regarding our current legal proceedings is presented below in Part I, Item 3.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our principal executive offices are located in a 79,000 square foot facility in Solon, Ohio, under a lease agreement expiring in April, 2011. Approximately 12,000 square feet of this space is subleased to another tenant through June, 2010. We also have leased facilities in Nashville, Tennessee, Pleasanton, California, and Berkshire, United Kingdom. In addition, we have a contract manufacturing facility near Tijuana, Mexico. We believe that our current facilities are adequate to support our current and anticipated operations.

Item 3. Legal Proceedings

On January 29, 2010, a competitor and former supplier filed a complaint against our company in the Court of Chancery of the State of Delaware, alleging that the company has misused proprietary trade secrets, breached a contract, and engaged in deceptive trade practices relating to one of our lighting products. The complaint seeks injunctive relief and damages. We are currently preparing to answer the complaint, but have not yet done so. We strongly deny any impropriety, believe that the complaint is without merit, and intend to vigorously defend ourselves. In our management's opinion, this lawsuit should not have an adverse effect on our financial condition, cash flows, or results of operations.

We are not currently engaged in any other litigation and do not anticipate becoming involved in any in the foreseeable future.

Item 4. Submission of Matters to a Vote of Security Holders

During the fourth quarter of the year ended December 31, 2009, there were no matters submitted to a vote of security holders.

Executive Officers of the Registrant

The following is the name, age, and present position of each of our executive officers, as well as all prior positions held by each of them during the last five years and when each of them was first elected or appointed as an executive officer.

Name	Age	Current Position and Business Experience
Joseph G. Kaveski	49	**Chief Executive Officer and Director** — May, 2008 to present. Prior to joining Energy Focus, Mr. Kaveski led his own strategic consulting business, TGL Company. As a consultant he worked with equity investors and publicly traded companies on strategic initiatives and planning. Other corporations Mr. Kaveski has worked for include Johnson Controls, Inc. where he was Vice President of Energy Management Services and Strategic Projects.
John M. Davenport	64	**President and Director** — May 2008 to present. Chief Executive Officer — July, 2005 to May, 2008. Chief Operating Officer — July, 2003 to July, 2005. Vice President and Chief Technology Officer — November, 1999 to July, 2003. Prior to joining Energy Focus, Mr. Davenport served as the president of Unison Fiber Optic Lighting Systems, LLC from 1998 to 1999. Before that, Mr. Davenport served at GE Lighting in various capacities for 25 years.
Eric W. Hilliard	42	**Chief Operating Officer and Vice President** — November, 2006 to present. Prior to joining Energy Focus, Mr. Hilliard served as a Business Manager at Saint Gobain‘s Aerospace Flight Structures Division from 2002 to 2006, overseeing the global sales and operaton for composite flight structure components to customers such as Embraer, Gulfstream, and EADS. Other career assignments include Goodrich Aerospace, Chemical Leaman, and the HJ Heinz Company serving in operational and international roles throughout his career.
Nicholas G. Berchtold	43	**Chief Financial Officer and Vice President of Finance** — July, 2007 to present. Prior to joining Energy Focus, Mr. Berchtold was the division controller at Wellman Products Group, a division of Hawk Corporation, from 2000 to 2007, where he was responsible for global financial reporting and analysis. Additionally, he served as the corporate assistant controller at Olympic Steel, Inc. from 1997 to 2000.
Roger F. Buelow	37	**Chief Technology Officer and Vice President** — July, 2005 to present. Vice President of Engineering from February, 2003 to July, 2005. Prior to joining Energy Focus, Mr. Buelow was the director of engineering at Unison Fiber Optic Lighting Systems, LLC from 1998 to 1999.

PART II

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

Our common stock trades on the NASDAQ Global Market under the symbol "EFOI." The following table sets forth the high and low sales prices for our common stock from its consolidated transaction reporting system.

	High	Low
First quarter 2008	$ 7.31	$ 2.31
Second quarter 2008	2.94	1.78
Third quarter 2008	2.75	1.45
Fourth quarter 2008	2.57	1.00
First quarter 2009	$ 1.86	$ 0.62
Second quarter 2009	1.21	0.56
Third quarter 2009	1.49	0.50
Fourth quarter 2009	1.04	0.47

There were approximately 120 holders of record of our common stock as of March 12, 2010, and we estimate that at that date there were approximately 2,500 additional beneficial owners.

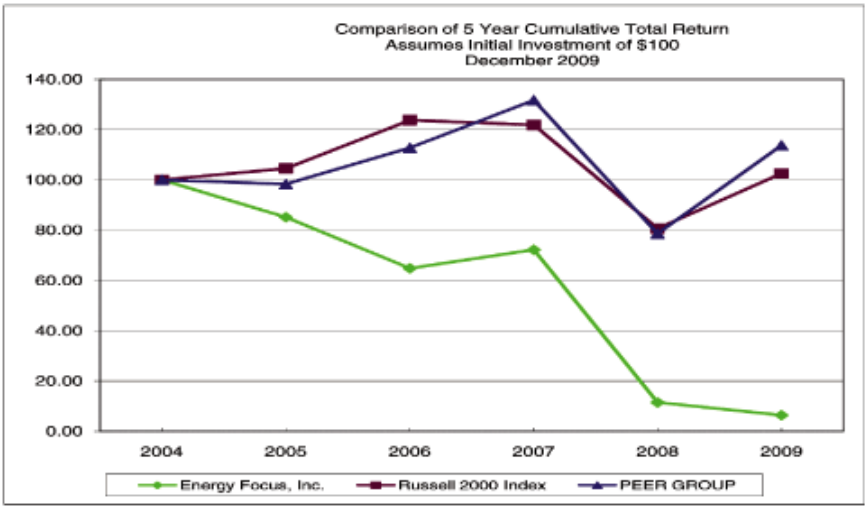
We have not declared or paid any cash dividends, and do not anticipate paying cash dividends in the foreseeable future.

Stockholder Matters

There were no reportable transactions in equity securities that required stockholder approval during 2009. On November 2, 2009, the company closed its common stock rights offering to its shareholders that raised $3,344,000, net of expenses. Stockholder approval was not required. There were no stock options exercised during the calendar year 2009.

Cumulative Total Return Comparison

The following graph compares the cumulative total shareholder return of the our common stock against the cumulative total return of the Russell 2000 Value Index, and a self-determined Peer Group for the period of the five fiscal years commencing December 31, 2004 and ending December 31, 2009. The graph and table assume that $100 was invested on December 31, 2004 in each of the Energy Focus, Inc. Common Stock, the Russell 2000 Value Index, and the self-determined Peer Group, and that all dividends were reinvested. The six companies in the self-determined Peer Group are: Cooper Industries, LTD., Pentair, Inc., Lime Energy Co., Nexxus Lighting, Inc., LSI Industries, Inc., and Orion Energy Systems, Inc. Cumulative total shareholder return for Energy Focus, Inc. Common Stock, the Russell 2000 Value Index, and the self-determined Peer Group are based upon the Energy Focus, Inc. fiscal year.



Item 6. Selected Financial Data

The Selected Operations and Balance Sheet Data set forth below have been derived from our Consolidated Financial Statements. It should be read in conjunction with the information appearing under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in Item 7 of this report and the Consolidated Financial Statements and related notes found in Item 8 of this report.

SELECTED CONSOLIDATED FINANCIAL DATA
(IN THOUSANDS, EXCEPT PER SHARE DATA)

YEARS ENDED DECEMBER 31,	2009	2008	2007	2006	2005
OPERATING SUMMARY					
Net sales from continuing operations	$ 12,489	$ 20,032	$ 19,761	$24,038	$24,838
Gross profit from continuing operations	2,040	4,106	5,057	6,139	8,589
Net loss from continuing operations	(9,814)	(12,673)	(10,987)	(9,329)	(7,524)
Net income/(loss) from discontinued operations	(1,201)	(1,775)	(330)	(321)	101
Net loss	(11,015)	(14,448)	(11,317)	(9,650)	(7,423)
Net loss per share:					
Basic	$ (0.70)	$ (1.02)	$ (0.98)	$ (0.85)	$ (0.90)
Diluted	$ (0.70)	$ (1.02)	$ (0.98)	$ (0.85)	$ (0.90)
Shares used in per share calculation:					
Basic	15,763	14,182	11,500	11,385	8,223
Diluted	15,763	14,182	11,500	11,385	8,223
FINANCIAL POSITION SUMMARY					
Total assets	$ 17,378	$ 23,636	$ 29,104	$40,652	$46,171
Cash and cash equivalents	1,062	10,568	8,412	15,968	23,578
Credit line borrowings	—	1,904	1,159	1,124	47
Current portion of long-term borrowings	—	54	1,726	780	342
Long-term borrowings	715	245	314	1,860	1,089
Shareholders' equity	11,505	16,789	21,618	30,880	38,184
Common shares outstanding	21,250	14,835	11,623	11,394	11,270

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

Overview

During 2009, we engaged in the design, development, manufacturing, marketing, and installation of energy-efficient lighting systems where the company served two principal markets: commercial/industrial lighting and pool lighting. We completed the initial phase of our new business strategy to provide turnkey, comprehensive energy-efficient lighting solutions, which use, but are not limited to, our patented and proprietary technology. Our solutions include light-emitting diode ("LED"), ceramic metal halide ("CMH"), fiber optic ("EFO"), high-intensity discharge ("HID"), and other highly energy-efficient lighting technologies. Typical savings related to our technology approximates 80% in electricity costs, while providing full-spectrum light closely simulating daylight colors. Our strategy also incorporates continued investment into the research of new and emerging energy sources including, but not limited to, solar energy.

During 2009, we made major progress in completing a restructuring plan focused on repositioning the company for growth and profitability. This plan involves four major areas of focus which include:

- Dramatic reduction of unabsorbed manufacturing and fixed overhead costs.
- Divesting of our non-strategic business units. In December 2009, we announced the sale of our German subsidiary, LBM Lichtleit Fasertechnik ("LBM"). We are currently investigating potential opportunities to divest one or more of our remaining legacy businesses.
- Leveraging our fundamental intellectual property and government research to create extremely energy-efficient illumination products for existing buildings. The company is currently developing an intelligent LED lamp to replace linear fluorescent lamps for general illumination. The LED replacement lamp is designed to reduce energy consumption by more than 80% while delivering superior lighting qualities.
- Establishing a national sales and delivery vehicle into the existing building market through the acquisition of lighting retrofit companies. On December 31, 2009, we completed the acquisition of Stones River Companies, LLC ("SRC"). SRC is a well established lighting retrofit company that services primarily the Southeastern region of the United States. We anticipate growth through expansion of SRC's geographical coverage and, possibly, through one or more subsequent acquisitions across the United States.

Our development of solar technology is continuing through our leadership role in the United States government's Very High Efficiency Solar Cell ("VHESC") Consortium sponsored by the Defense Advanced Research Projects Agency ("DARPA"). The goal of the VHESC project is to develop a 40% or greater efficient solar cell for United States military applications, which would also be available to the public for commercial application. On September 24, 2009, we announced that we entered into a $3,100,000 contract with the VHESC Consortium to deliver advanced solar research to enable high efficiency, low-cost photovoltaics. On October 29, 2009, we announced that we entered into a $100,000, twelve month contract with the VHESC Consortium to deliver advanced solar research to achieve low-cost efficient spectrum splitting.

In March, 2009, the Department of Defense selected Energy Focus to receive a Phase I Small Business Innovative Research ("SBIR") Grant to begin the development of a "Solid State Infrared Replacement for the M-278 Flare" for the United States Army's Hydra Rocket System. In July, 2009, the Naval Research Warfare Center awarded us a $1,400,000 contract to develop and produce solid state lighting fixtures for use on Virginia Class attack submarines. In August, 2009, DARPA awarded us a $500,000 SBIR extension grant to develop and produce solid state lighting fixtures for general use on United States Navy ships. Also in September, we entered into a $100,000 Agreement with the Department of Energy for a Phase I SBIR project to investigate methods of using coatings to improve color consistency for Metal Halide lamps.

Results of Operations

Cash Utilization

Cash utilization was $9,605,000 for the twelve months ended December 31, 2009, excluding $3,749,000 of cash proceeds received from the issuance of rights to purchase common stock and $3,650,000 of net cash disbursements related to the acquisition of SRC and related bonding securitization. This represents a 29.2% increase compared to the twelve months ended December 31, 2008. Excluding bonding securitization, net cash disbursements related to the acquisition of SRC was $1,150,000. Cash utilization for the twelve months ended December 31, 2008 was $7,434,000, excluding $9,590,000 of cash proceeds received, $9,335,000 net of expenses, from the issuance of common stock and warrants to purchase shares of common stock.

Net Sales

Our sales breakdowns, by product lines, with EFO products as a separate line item, are as follows (in thousands):

	Year ending December 31,		
	2009	2008	2007
EFO	$ 7,330	$ 10,094	$ 6,360
Traditional pool	2,422	5,054	9,003
Traditional commercial lighting	2,737	4,884	4,398
Total net sales	$ 12,489	$ 20,032	$ 19,761

Net sales from continuing operations decreased 37.7% to $12,489,000 for the twelve months ended December 31, 2009. The decline was primarily a result of a $2,764,000 decrease in EFO product net sales, a decrease of $2,632,000 in traditional pool lighting sales, and a decrease of $2,417,000 in net sales by our United Kingdom subsidiary. During 2009, $571,000 of net sales was recognized from the delivery of certain milestones to E.I. DuPont de Nemours and Company as part of the VHESC Consortium being funded by DARPA. Net sales were significantly depressed from prior year levels due to the on-going global economic and financial crisis. Our net sales were particularly adversely impacted by significant reductions in residential and new construction against which our pool and commercial markets are closely aligned.

Net sales from continuing operations increased 1.4% to $20,032,000 for the twelve months ended December 31, 2008, compared to $19,761,000 in 2007. This slight growth was a result of an increase of $4,220,000 in EFO and traditional commercial lighting net sales offset by decreased traditional pool lighting net sales of $3,949,000. The decrease in traditional pool lighting net sales was due primarily to a decrease in net sales from our in-ground and jazz lighting products. The decrease in traditional commercial lighting net sales was due to lower net sales in the United States and Germany.

International Sales

We have a foreign manufacturing operation in the United Kingdom, and net sales and expenses from these operations are denominated in local currency, thereby creating exposures to changes in exchange rates. Fluctuations in this operation's respective currency may have an impact on our business, results of operations, and financial position. We currently do not use financial instruments to hedge our exposure to exchange rate fluctuations with respect to our international operations. As a result, we may experience substantial foreign currency translation gains or losses due to the volatility of other currencies compared to the United States dollar, which may positively or negatively affect our results of operations attributed to these operations. For continuing operations, international net sales accounted for approximately 36.5% of net sales in 2009, as compared to 35.6% for 2008, and 25.3% for 2007. The impact of changes in foreign currency exchange rates resulted in a reduction in reported net sales for 2009 of $754,000 from 2008 levels as compared to a decrease in reported net sales for 2008 of $452,000 from 2007 levels. On a local currency basis, net sales decreased 23.7% for our United Kingdom operation from 2008 levels. The breakdown of our global sales is as follows (in thousands):

	Year ending December 31,		
	2009	2008	2007
United States Domestic	$ 7,930	$ 12,902	$ 14,770
United Kingdom	2,094	2,940	3,152
Others	2,465	4,190	1,839
Total net sales	$ 12,489	$ 20,032	$ 19,761

Gross Profit

We had gross profit of $2,040,000 in 2009, a decrease of 50.3%, compared to $4,106,000 in 2008. Total gross profit as a percentage of total net sales was 16.3% in 2009, compared to 20.5% in 2008. Global economic conditions within all of our legacy markets, and particularly within the housing and new construction markets, deteriorated at a pace faster than our cost reduction initiatives could offset. Through September, 2009, we maintained two manufacturing and assembly facilities for our North American operations which resulted in overall lower gross profitability on a net sales per dollar basis. In a continuing effort to reduce the fixed overhead of the company, and in conjunction with the strategic transition, into a turnkey energy-efficient lighting services solutions company, we relocated 100% of the North American manufacturing and assembly operation into our lower cost Mexican contract manufacturing facility. Furthermore, we eliminated our Solon, Ohio distribution services operation in the first quarter of 2010. Lastly, we are currently in discussions with our Solon facility landlord to develop a mutually beneficial early termination of our lease agreement in that facility.

In 2008, we had gross profit of $4,106,000, compared to $5,057,000 in 2007. As a percentage of sales, the gross profit for 2008, was 20.5% compared to 25.6% in 2007. Included in the 2008 gross profit is total expense in the amount of $1,071,000 related to our modification of the definition of slow-moving and obsolete inventory reserve. Gross profit was also favorably impacted by a mid-year price increase within the commercial lighting business unit.

Operating Expenses

Research and Development

Gross research and development expenses were $1,081,000 in 2009, a 4.5% decrease from $1,132,000 in 2008. Gross research and development expenses were $1,132,000 in 2008, a 63.8% decrease from $3,128,000 in 2007. The decrease in 2009 was primarily due to an $86,000 decrease in salaries and benefits. The decrease in 2008 from 2007 levels was primarily due to an $809,000 decrease in salaries and benefits and a $347,000 decrease in expenses related to the various research and development projects.

Our gross research and development expenses are reduced on a proportional performance basis under DARPA Small Business Innovative Research ("SBIR") development contracts. In 2007, SBIR contracts were signed totaling $1,500,000 to be reimbursed over a two-year recovery period. During 2009, additional SBIR contracts were signed totaling $1,707,000 to be reimbursed through July, 2010. The amount of credits incurred and accrued from government contracts were $762,000 in 2009, compared to $895,000 in 2008, and $517,000 in 2007. Net research and development expenses were 2.6% of net sales in 2009, compared to 1.2% of net sales in 2008, and 13.2% in 2007. At December 31, 2009, $1,409,000 remained as unrecognized reductions of gross research and development expenses for these contracts. We are currently pursuing additional contracts through various government agencies, and anticipate being granted additional contracts throughout 2010.

When the government contract is for the delivery of a product or service, we recognize net sales from those government projects according to proportional performance method or actual deliveries made. Costs related to the completion of the sale are charged to cost of sales. In 2009, net sales recognized from completed deliveries were $928,000. The net sales recognized for completed deliveries of products or services were $1,670,000 in 2008 and $542,000 in 2007. For further information on our revenue recognition policy, please refer to "Critical Accounting Policies and Estimates" within this section of the report.

Net credits received from government reimbursement are the combination of net sales and credits against gross research and development costs. In 2009, our net credits were $1,690,000, compared to $2,565,000 in 2008 and $1,059,000 in 2007.

The gross and net research and development spending along with credits from government contracts is shown in the following table (in thousands):

	Year ending December 31,		
	2009	2008	2007
Gross R&D Expense and Government Reimbursement:			
Gross expenses for research and development	$ 1,081	$ 1,132	$ 3,128
Deduct: incurred and accrued credits from government contracts	(762)	(895)	(517)
Net research and development expenses	$ 319	$ 237	$ 2,611
Total Credits Received and Revenue Recognized on Government Projects:			
Incurred and accrued credits from government contracts	$ 762	$ 895	$ 517
Revenue recognized for completed deliveries	928	1,670	542
Net credits received and revenue recognized	$ 1,690	$ 2,565	$ 1,059

Sales and Marketing

Sales and marketing expenses were $6,044,000 in 2009, compared to $8,081,000 in 2008, a decrease of 25.2%. In 2009, sales and marketing expenses for pool lighting amounted to $1,032,000, or 17.1% of total sales and marketing cost, whereas sales and marketing expense for commercial lighting was $5,012,000, or 82.9% of total marketing costs. The decrease in 2009 was primarily a result of a $496,000 decrease in salaries and benefits, a $342,000 decrease in advertising and trade show expenses, a $160,000 decrease in sales commissions as a result of lower period-over-period sales, as well as management's efforts to reduce costs.

In 2008, sales and marketing expenses were $8,081,000, a decrease of 1.8% compared to the $8,227,000 in 2007. In 2008, sales and marketing expenses for pool lighting amounted to $2,149,000, or 26.6% of total sales and marketing cost, whereas sales and marketing expense for commercial lighting was $5,932,000, or 73.4% of total marketing costs. In 2007, sales and marketing expenses for pool lighting amounted to $2,677,000, or 32.5% of total sales and marketing cost, whereas sales and marketing expense for commercial lighting was $5,550,000, or 67.5% of total marketing costs.

General and Administrative

General and administrative expenses were 42.7% of net sales in 2009, compared to 27.2% of net sales in 2008, and 25.4% of net sales in 2007. General and administrative expenses were $5,333,000 in 2009, a 2.0% decrease, as compared to $5,443,000 in 2008. This decrease was largely the result of an $114,000 decrease in salaries and benefits. Excluding one-time expenses of $434,000 associated with the acquisition of SRC, general and administrative expenses for 2009 were $4,899,000, which represents a decrease of 10.0% from 2008 levels.

General and administrative expenses were $5,443,000 in 2008, an 8.5% increase, as compared to $5,015,000 in 2007. This increase was largely the result of a $514,000 increase in salaries and benefits due to the May 2008 appointment of our new Chief Executive Officer as well as the reclassification of certain executives' salaries and expenses out of manufacturing and research and development.

In the fourth quarter of 2008, as a result of our annual test for impairment required under Accounting Standards Codification ("ASC") Number 350, *Intangibles—Goodwill and Others* ("ASC 350"), and based on an assessment of its present and future operations, we recognized a non-cash expense of $4,305,000 for the impairment of our goodwill. Of this amount, $3,195,000 relates to continuing operations. The goodwill was originally recorded at the time of the acquisitions of Fiber Optic International, Crescent Lighting Limited, LBM, Unison Fiber Optic Lighting Systems, and Lightly Expressed Limited. As of December 31, 2009, we have no remaining goodwill on our books related to these acquisitions. As of December 31, 2009, we have $672,000 of goodwill on our books related to the recent acquisition of SRC in Nashville, Tennessee. There was no impairment of goodwill in 2009 and 2007.

We recognized restructuring expenses of $125,000 and $456,000 for 2009 and 2007, respectively. For both years, these expenses were associated with relocating our manufacturing equipment and operations. We incurred no restructuring expense during 2008.

Excluding restructuring expenses of $125,000 in 2009, total operating expenses decreased $2,065,000, or 15.0% from 2008. Excluding the non-cash loss on impairment charge from continuing operations of $3,195,000 in 2008 and the $456,000 restructuring expenses for 2007, total operating expenses decreased $2,092,000, or 13.2%, from 2007 levels.

Other Income and Expenses

We had interest income of $15,000 and interest expense of $88,000 in 2009. Interest income consists of interest earned on deposits. Interest expense is for bank interest on our line of credit and equipment loans. Our interest income was $181,000 in 2008, compared to $564,000 in 2007. Our interest expense was $163,000 in 2008, compared to $259,000 in 2007.

We have certain long-term leases. Payments due under these leases are disclosed below and in Note 10 in the Consolidated Financial Statements and related notes included elsewhere in this report.

Discontinued Operations

As part of our strategy of evaluating the viability of our non-core businesses and our aggressive pursuit of capital funding, we determined that our German subsidiary was not directly aligned with our objective to become a leading provider of turnkey, comprehensive energy-efficient lighting solutions. Therefore, in the third quarter of 2009, we committed to a plan to sell our German subsidiary, LBM.

In December 2009, we completed the sale of our ownership in LBM for $225,000 comprised of cash and a promissory note. Furthermore, we will receive an earn out equal to ten percent ("10%") of post-acquisition, pre-amortization, pre-tax profit for a period of 24 months commencing January, 2010. Excluding this earn out, we recorded a loss on disposal of subsidiary of $664,000. As part of this transaction, the purchaser assumed all rights to both tangible and intangible assets as well as all of the liabilities of LBM.

Net sales from discontinued operations for 2009, 2008 and 2007 were $1,462,000, $2,787,000 and $3,109,000, respectively. Losses from discontinued operations, net of taxes were $1,201,000, $1,775,000, and $330,000 for the years 2009, 2008 and 2007, respectively. Included in the loss from discontinued operations, net of taxes for 2009 was the loss on the sale of LBM of $664,000, and an impairment charge of $165,000 that arose when the office building owned by LBM was sold during the restructuring of LBM into a sales office. For 2008, loss from discontinued operations, net of taxes included a $1,110,000 non-cash expense for the impairment of goodwill as a result of our annual test for impairment required under ASC 350, and based on an assessment of its present and future operations.

We have reported the business described above as discontinued operations for all periods presented. For further information about discontinued operations, see Note 4 to the Consolidated Financial Statements.

Income Taxes

We have a full valuation allowance against our United States deferred tax assets. The net deferred tax assets for 2009 amounted to $11,000 and were for our United Kingdom subsidiary, which reported income in 2009 and has been profitable prior to 2007. We had no net deferred liabilities at December 31, 2009 or December 31, 2008. There were no Federal tax expenses for the United States operations in 2008, as any expected benefits were offset by an increase in the valuation allowance.

For 2008, we had a full valuation allowance against our United States and German deferred tax assets. The net deferred tax assets for 2008 amounted to $15,000 and were for our United Kingdom subsidiary, which reported income in 2008 and has been profitable prior to 2007. The income tax benefit from the United States operations for 2008 related to the reversal of the 2007 deferred tax liability of $252,000 for goodwill as a result of the book impairment. There were no Federal tax expenses for the United States operations in 2008, as any expected benefits were offset by an increase in the valuation allowance. A tax provision of $2,000 was recorded for our United Kingdom operation, and no tax benefits were recorded for the 2008 German operations loss.

For 2007, we had a full valuation allowance against our deferred tax assets in the United States and Germany. There was a tax expense of $13,000 for our United Kingdom operations in 2007. There were no tax expenses or benefits for our German operations. In 2007, all expected benefits were offset by an increase in our valuation allowance. We had a tax expense of $177,000 in the United States, resulting from a tax liability associated with tax treatment for goodwill.

Net Loss

The net loss was $11,015,000 for 2009, a decrease of 23.8% from our net loss of $14,448,000 in 2008. Included in the 2009 net loss is total expense in the amount of $125,000 related to the relocating our manufacturing operations in the United States from Solon, Ohio to Mexico.

The net loss was $14,448,000 for 2008, an increase of 27.7% from our net loss of $11,317,000 in 2007. Included in the 2008 net loss is total expense in the amount of $1,071,000 related to our increase in slow-moving and obsolete inventory reserves. Also included in the 2008 net loss is a non-cash expense of $4,305,000 for the impairment of our goodwill. Of this amount, $3,195,000 relates to continuing operations.

Liquidity and Capital Resources

Cash and Cash Equivalents

At December 31, 2009, our cash and cash equivalents were $1,062,000, compared to $10,568,000 at December 31, 2008. We had $715,000 in long-term borrowings as of December 31, 2009. We had $245,000 in long-term borrowings and $1,958,000 in short-term borrowings as of December 31, 2008. Cash utilization was $9,605,000 for the twelve months ended December 31, 2009, excluding $3,749,000 of cash proceeds received from the issuance of rights to purchase common stock in November, 2009, and $3,650,000 of net cash disbursements related to the acquisition of SRC and related bonding securitization, which occurred on December 31, 2009. Excluding bonding securitization, net cash disbursements related to the acquisition of SRC were $1,150,000.

In November, 2009, we received an additional $3,344,000 in equity financing, net of expenses by selling 4,813,000 shares of common stock in a registered offering. The investment was made by numerous current Energy Focus shareholders. The investment was made under our company’s registration statement for a $3,500,000 common stock subscription rights offering. Under the terms of the rights offering, we distributed, at no charge to our shareholders, transferable rights to purchase up to 3.5 million of our common stock at the established subscription price per share of $0.75, which was set by our Board of Directors. At the time the offering began, we distributed to each shareholder one transferable right for each share of common stock owned by the shareholder. Each right entitled the holder to purchase one share of our common stock, par value $0.0001 per share, subject to a maximum of 4,600,000 shares to be issued in the offering. Shareholders were entitled to subscribe for shares not subscribed for by other shareholders.

In March, 2008, we received an additional $9,335,000 in equity financing, net of expenses. The investment was made by several current Energy Focus shareholders. These investors agreed to an at-market purchase of approximately 3,184,000 units for $3.205 per unit, based on the closing bid price of Energy Focus common shares on March 13, 2008 of $3.08. Each unit comprised one share of our common stock, par value $0.0001 per share, and one warrant to purchase one share of our common stock at an exercise price of $3.08 per share. The warrants were immediately separable from the units, immediately exercisable, and will expire March 14, 2013. This additional financing has been used to fund working capital requirements and perform additional research and development.

Cash Used in Operating Activities

Net cash used by operating activities of continuing operations primarily consists of net loss adjusted by non-cash items, including depreciation, amortization, stock-based compensation, loss on impairment, and the effect of changes in working capital. Cash decreased during 2009, by a net loss of $11,015,000, compared to net losses of $14,448,000 and $11,317,000 for 2008, and 2007, respectively. After adjustments, net cash used by continuing operating activities was $10,141,000 in 2009, compared to $5,695,000 for 2008, and $7,335,000 in 2007.

Net cash used in operating activities of discontinued operations primarily consists of net loss adjusted by non-cash items, including depreciation and the effect of changes in working capital. Cash decreased during 2009 by a net loss of $1,201,000, compared to a net loss of $1,775,000 and $330,000 for 2008 and 2007, respectively. After adjustments, net cash used by operating activities of discontinued operations was $421,000 for 2009, compared to a net cash usage of $135,000 and $167,000 for 2008 and 2007, respectively.

Cash (Used in) Provided by Investing Activities

Net cash used in continuing investing activities was $1,682,000 for 2009. This usage primarily results from the recent acquisition of SRC. In 2009, there was a usage of cash of $182,000 for the purchase of fixed assets. There was a usage of cash of $358,000 in 2008 for the purchase of fixed assets. In 2007, the contribution of cash was $11,861,000, primarily due to net sales of short-term investments totaling $12,351,000, offset by the purchase of fixed assets of $490,000.

Cash Provided by Financing Activities

Net cash provided by continuing financing activities was $2,352,000 for 2009, compared to $8,598,000 in 2008 and $409,000 in 2007. Proceeds from stock issuances, net of expenses, provided $3,508,000 in cash in 2009, net of expenses. Also in 2009, additional long-term borrowings of $483,000 were reduced by debt payments of $1,776,000. In 2008, proceeds from stock issuances provided $9,335,000 in cash, net of expenses, and additional bank borrowings of $802,000 were reduced by debt payments of $1,672,000. During 2007, the net cash contribution was due to our receipt of $964,000 in proceeds from the exercising of stock options, offset by debt payments of $617,000.

Net cash used in discontinued financing activities was $428,000 for 2009, compared to $105,000 in 2008 and $2,000 in 2007. This cash usage was due to payments by our German subsidiary on its line of credit of $2,474,000, and long-term bank borrowings of $294,000, offset by borrowings on its line of credit of $2,348,000.

As a result of the cash used in operating and financing activities, and the cash provided by investing activities, there was a net decrease in cash in 2009 of $9,506,000 that resulted in an ending cash balance of $1,062,000 as of December 31, 2009. This compares to a net increase in cash of $2,156,000 in 2008, resulting in an ending cash balance of $10,568,000 at the end of 2008, and a net increase in cash of $4,707,000 in 2007, resulting in an ending cash balance of $8,412,000 at the end of 2007.

Effective October 15, 2008, we entered into a one year credit agreement with Silicon Valley Bank (“SVB”) incorporating a $4,000,000 revolving line of credit which replaced all existing facilities including the United States term loans. This new line of credit included a $1,500,000 sub-limit for cash management products, letters of credit and foreign currency exchange. Under this agreement, all domestic existing term loans and revolving credit lines were repaid and funded by this new borrowing arrangement. Borrowings under this agreement were collateralized by our assets, including intellectual property, and bore interest at the SVB Prime Rate plus 1%. We were required to maintain 85% of our cash and cash equivalents in operating and investment accounts with SVB and were also required to comply with certain covenant requirements, including a tangible net worth covenant. The amount of borrowings available to the company was the lesser of $4,000,000 or the sum of up to 75% of eligible accounts receivable, as defined by the agreement, and 50% of our cash balance in deposit at SVB, capped at $1,500,000.

At December 31, 2008, we were not in compliance with the tangible net worth covenant requirement and such condition continued throughout 2009. As such, we entered into a series of loan modification and forbearance agreements (“agreements”) with effective dates ranging from January 31, 2009 through November 17, 2009. In conjunction with these agreements, the terms of our credit facility were revised culminating in a reduction to our revolving line of credit to $1,300,000 with a maturity date of October 15, 2009 and a change in the rates of interest charged throughout 2009 in the range of SVB Prime Rate plus 1.5% to 3.00%. Under this revised credit facility, we were required to maintain all of our cash and cash equivalents in operating and investment accounts with SVB and its affiliates and were also required to continue compliance with certain covenant requirements, including the tangible net worth covenant. During the third quarter of 2009, SVB informed the company that it did not intend to renew our revolving line of credit when it was set to expire on October 15, 2009. Ultimately, we were able to extend the maturity date of this credit facility to December 31, 2009 at which time we liquidated the outstanding balance of $253,000 on the line of credit. We have yet not replaced this credit facility but we are actively pursuing other potential financial resources to replace and/or compensate for the loss of the line of credit.

Borrowings under the revolving line of credit were $1,776,000 at December 31, 2008. The revolving line of credit borrowings were recorded in the consolidated balance sheets as a current liability. Available borrowings under this line of credit were $263,000 at December 31, 2008. The interest rate at the time of the liquidation of the credit facility on December 31, 2009 was 7.0% versus 5.0% at December 31, 2008.

On May 27, 2009, we entered into an unsecured Promissory Note ("Note") with The Quercus Trust ("The Trust") in the amount of $70,000. Under the terms of this Note, we are obligated to pay The Trust the principal sum of the Note and interest accruing at a yearly rate of 1.00% in one lump sum payment on or before June 1, 2109. We received these funds on June 9, 2009.

On December 29, 2009 and in conjunction with the acquisition of SRC, we entered into Letter of Credit Agreements ("LOC's") with John Davenport, President of our company, and with The Trust, for $250,000 and $300,000, respectively. These LOC's have terms of 24 months and bear interest at a rate of 12.5% on the face amount. The LOC's are collateralized by a percentage of the capital stock of Crescent Lighting Ltd. ("CLL") which in turn is based on CLL's net worth as of November 30, 2009 and is subordinated to the senior indebtedness of the company and CLL. In addition, subject to approval by shareholders at the next annual meeting, we will issue five-year, detachable penny warrants ($.01 per share) to purchase common stock at a rate of 0.5 warrants per dollar of the face amount of the LOC.

In conjunction with the acquisition of SRC on December 31, 2009, we entered into an agreement with TLC Investments, LLC ("TLC"), whereby a convertible promissory note ("Convertible Note") was issued for the principal amount of $500,000. This Convertible Note bears interest at the Wall Street Journal Prime Rate plus two percent (2%), which along with the principal, is due and payable on June 30, 2013 ("maturity date"). Additionally, TLC has the right to convert the principal of the Convertible Note, in whole, into 500,000 shares of our common stock at any time during the period commencing on June 30, 2010 and through the maturity date. Additionally, as a provision to the Convertible Note, if the reported closing price of a share of common stock of the company shall not be equal to or greater than $2.00 for at least twenty (20) trading days between June 30, 2010 and June 30, 2013, we shall pay TLC an additional fee of $500,000 on the maturity date.

Through our United Kingdom subsidiary, we maintain a British pounds sterling-denominated bank overdraft facility with Lloyds Bank Plc, in the amount of $406,000, based on the exchange rate at December 31, 2009. There were no borrowings against this facility as of December 31, 2009 or December 31, 2008. This facility is renewed annually on January 1. The interest rate on the facility was 2.75% at December 31, 2009, and 7.25% at December 31, 2008.

Through our former German subsidiary, which has been classified as discontinued operations in our consolidated financial statements; we maintained a Euro-denominated credit facility under an agreement with Sparkasse Neumarkt Bank. This credit facility was put in place to finance the building of offices in Berching, Germany, which were owned and occupied by our former German subsidiary. In June, 2009, we paid, in its entirety, the balance due on the credit facility with proceeds received from the sale of the office building in Berching, Germany. Borrowings against this facility were valued at $299,000 at December 31, 2008 based on the exchange rate at December 31, 2008. The interest rate was 5.49% at December 31, 2008.

In addition, our former German subsidiary had a Euro-denominated revolving line of credit with Sparkasse Neumarkt Bank. At December 31, 2008, we had borrowings against this line of credit valued at $128,000 based on the exchange rate at December 31, 2008. The interest rate on this line of credit was 11.00% at December 31, 2008.

Contractual Obligations

The following summarizes our contractual obligations as of December 31, 2009, consisting of current and future payments for borrowings in the United States, and minimum lease payments under operating leases, as well as the effect that these obligations are expected to have on our liquidity and cash flow in future periods (in thousands):

Year ending December 31,	United States Long-Term Borrowings	Non-Cancelable Operating Leases	Total
2010	$ —	$ 869	$ 869
2011	550	285	835
2012	—	58	58
2013	500	53	553
2014	—	47	47
2015 and thereafter	70	113	183
Gross long-term borrowings	1,120	1,425	2,545
Less: discounts on long-term borrowings and sublease payments	(405)	(36)	(441)
Total commitment, net	$ 715	$ 1,389	$ 2,104

Off-Balance Sheet Arrangements

We had no off-balance sheet arrangements as of December 31, 2009 or 2008.

Going Concern

We have experienced net losses of $11,015,000 and $14,448,000 for the years ended December 31, 2009 and 2008, respectively. As of December 31, 2009, we had an accumulated deficit of $60,343,000. Although management believes that we have addressed many of the legacy issues that have historically burdened our financial performance, we still face challenges in order to reach profitability. In order for us to attain profitability and growth, we will need to successfully address these challenges, including the continuation of cost reductions throughout our organization, execution of our marketing and sales plans for our new turnkey energy-efficient lighting solutions business, continued evaluation and divestiture of non-core business product lines, and continued improvements in our supply chain performance.

Our independent public accounting firm has issued an opinion in our 2009 Annual Report on Form 10-K raising substantial doubt as to our ability to continue as a going concern. This opinion stems from our historically poor operating performance, the on-going global economic crisis, and our historical inability to generate sufficient cash flow to meet obligations and sustain operations without obtaining additional external financing. Although we are optimistic about obtaining the funding necessary for us to continue as a going concern, there can be no assurances that this objective will be successful. We are currently aggressively pursuing the following external funding sources:

- obtain financing and/or grants available through federal, state, and/or local governmental agencies,
- obtain financing from various financial institutions,
- obtain financing from non-traditional investment capital organizations,
- potential sale or divestiture of one or more operating units, and
- obtain funding from the sale of our common stock or other equity instruments.

Obtaining financing through the above-mentioned mechanisms contains risks, including:

- government stimulus and/or grant money is not allocated to us despite our focus on the design, development, and manufacturing of energy efficient lighting systems,
- loans or other debt instruments may have terms and/or conditions, such as interest rate, restrictive covenants, and control or revocation provisions, which are not acceptable to management or our Board of Directors,
- the current global economic crisis combined with our current financial condition may prevent us from being able to obtain any debt financing,
- financing may not be available for parties interested in pursuing the acquisition of one or more of our operating units, and
- additional equity financing may not be available to us in the current economic environment and could lead to further dilution of shareholder value for current shareholders of record.

Critical Accounting Policies and Estimates

The preparation of financial statements requires that we make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingencies, and the reported amounts of net sales and expenses in the financial statements. Material differences may result in the amount and timing of net sales and expenses if different judgments or different estimates were utilized. Critical accounting policies, judgments, and estimates that we believe have the most significant impact on our financial statements are set forth below:

- Revenue recognition;
- Allowances for doubtful accounts, returns and discounts;
- Long-lived assets;
- Valuation of inventories;
- Accounting for income taxes; and
- Share-Based compensation.

Revenue Recognition

Revenue is recognized when it is realized or realizable, has been earned, and when all of the following has occurred:

- persuasive evidence or an arrangement exists, e.g., a sales order, a purchase order, or a sales agreement,
- shipment has occurred, with the standard shipping term being F.O.B. ship point, or services provided on a proportional performance basis or installation have been completed,
- price to the buyer is fixed or determinable, and
- collectability is reasonably assured.

Revenues from our **products-based** business are generally recognized upon shipping based upon the following:

- all sales made by the company to its customer base are non-contingent, meaning that they are not tied to that customer's resale of products,
- standard terms of sale contain shipping terms of F.O.B. ship point, meaning that title is transferred when shipping occurs, and
- there are no automatic return provisions that allow the customer to return the product in the event that the product does not sell within a defined timeframe.

Revenues from our **products-based** business that incorporate **specifically-defined installation** services have historically been recognized as follows:

- product sale at completion of installation, and
- installation service at completion of installation.

For 2010, revenues from our l**ighting solutions-based** business will generally be larger contracts and may range from three to eighteen months in duration. Furthermore, these contracts generally contain multiple deliverables which entitle us to record revenue associated with each element of these contracts based upon that individual element's fair value or percentage-of-completion basis based upon the percentage of costs incurred. Fair value is generally defined as the price charged for that element that has value to the customer on a stand-alone basis. The elements of a multiple deliverables contract which would have value on a stand-alone basis include:

- comprehensive site assessment, which includes a review of the current lighting requirements and energy usage at the customer's facility,
- site field verification, where we perform a test implementation of our energy management system at a customer's facility upon request,
- utility incentive and government subsidy management, where we assist our customers in identifying, applying for and obtaining available utility incentives or government subsidies,
- engineering design, which involves designing a customized system to suit our customer's facility lighting and energy management needs, and providing the customer with a written analysis of the potential energy savings and lighting and environmental benefits associated with the designed system,
- project management, which involves our working with the electrical contractor in overseeing and managing all phases of implementation from delivery through installation for a single facility or through multi-facility roll-outs tied to a defined project schedule,
- installation services, which we provide through our national network of qualified third-party installers, and
- recycling in connection with our retrofit installations, where we remove, dispose of and recycle our customer's legacy lighting fixtures.

We warrant our products against defects or workmanship issues. We set up allowances for estimated returns, discounts, and warranties upon recognition of revenue and these allowances are adjusted periodically to reflect actual and anticipated returns, discounts, and warranty expenses. These allowances are based on past history and historical trends, current economic conditions, and contractual terms. Our distributor's obligation to us is not contingent upon the resale of our products and as such does not prohibit revenue recognition.

Allowances for Doubtful Accounts, Returns, and Discounts

We establish allowance for doubtful accounts and returns for probable losses, based on past history, current economic conditions, and contractual terms. The specific components are as follows:

- Allowance for doubtful accounts for accounts receivable, and
- Allowance for sales returns.

In 2009, the total allowance was $395,000, with $317,000 related to accounts receivable and $78,000 related to sales returns. In 2008, the total allowance had a balance of $486,000 with $356,000 related to accounts receivable and $130,000 related to sales returns.

We review these allowance accounts periodically and adjust them accordingly for current conditions.

Long-lived Assets

Goodwill represents the excess of the purchase price over the fair value of identifiable net assets acquired in business acquisitions. We evaluate goodwill for impairment at least annually. Evaluating goodwill for impairment involves a two-step process. The first step is to estimate the fair value of the reporting unit. There are several valuation methods for estimating a reporting unit's fair value, including market quotations and discounted projected future net earnings or net cash flows and multiples of earnings. If the carrying amount of a reporting unit, including goodwill, exceeds the estimated fair value, a second step is performed. Under the second step, the identifiable assets, including identifiable intangible assets and liabilities of the reporting unit are estimated at fair value as of the current testing date. The excess of the estimated fair value of the reporting unit over the estimated fair value of net assets establishes the implied value of goodwill. The excess of the recorded goodwill over the implied value is charged to earnings as an impairment loss. A significant amount of judgment is required in estimating fair value of the reporting unit and performing these tests.

As a result of our testing, in the fourth quarter of 2008, we recorded a non-cash impairment charge for goodwill of $4,305,000, which represented the entire carrying value of goodwill at December 31, 2008. Of this amount, $3,195,000 relates to continuing operations. As of December 31, 2009, we had $672,000 of goodwill recorded on our Consolidated Financial Statements related to the December 31, 2009 acquisition of SRC. We engaged an independent third-party expert to assist in the allocation of the excess purchase price to the various specific separately identifiable intangible assets, including goodwill.

Valuation of Inventories

We state inventories at the lower of standard cost (which approximates actual cost determined using the first-in-first-out method) or market. We establish provisions for excess and obsolete inventories after evaluation of historical sales, current economic trends, forecasted sales, product lifecycles, and current inventory levels. During 2009, 2008, and 2007, we charged $533,000, $1,503,000, and $677,000, respectively, to cost of sales for excess and obsolete inventories. Included in 2008 is total expense in the amount of $1,071,000 related to our modification of the definition of slow-moving and obsolete inventory reserve. Management deems this increase appropriate as technology developments within the lighting industry continues to accelerate. Adjustments to our estimates, such as forecasted sales and expected product lifecycles, could harm our operating results and financial position.

Accounting for Income Taxes

As part of the process of preparing our consolidated financial statements, we are required to estimate our income tax liability in each of the jurisdictions in which we do business. This process involves estimating our actual current tax expense together with assessing temporary differences resulting from differing treatment of items, such as deferred revenues, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included in our consolidated balance sheet. We then must assess the likelihood that these deferred tax assets will be recovered from future taxable income and, to the extent that we believe that recovery is not certain or is unknown; we must establish a valuation allowance.

Significant management judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities, and any valuation allowance recorded against our deferred tax assets. At December 31, 2009, we have recorded a full valuation allowance against our deferred tax assets in the United States and Germany, due to uncertainties related to our ability to utilize our deferred tax assets, primarily consisting of certain net operating losses carried forward. The valuation allowance is based upon our estimates of taxable income by jurisdiction and the period over which our deferred tax assets will be recoverable.

Share-Based Payments

In December 2004, the FASB issued ASC Number 718, *Compensation — Stock Compensation* ("ASC 718"). ASC 718 requires all entities to recognize compensation expense in an amount equal to the fair value of share-based payments, such as stock options granted to employees. We have applied ASC 718 using the modified prospective method. Under this method, we are required to record compensation expense (as previous awards continue to vest) for the unvested portion of previously granted awards that remain outstanding at the date of adoption. In March, 2005, the SEC released Staff Accounting Bulletin No. 107, "Share-Based Payment" (SAB 107), which provides interpretive guidance related to the interaction between ASC 718 and certain SEC rules and regulations. It also provides the SEC staff's views regarding valuation of share based payment arrangements. The application of ASC 718 with SAB 107 had the effect of increasing stock-based compensation expense and reducing earnings by $624,000 in 2009, $715,000 in 2008, and $877,000 in 2007.

We measure all employee stock-based awards as an expense based on the grant-date fair value of these awards. The fair value of options is estimated on the date of grant using the Black-Scholes option pricing model. Weighted average assumptions used in the model include the expected life of the options, risk-free interest rate, and volatility. The estimated expected life of the option is calculated based on the contractual life of the option, the vesting life of the option, and historical exercise patterns of vested options. The volatility estimates are calculated using historical pricing experience.

Recently Issued Accounting Pronouncements

In January, 2010, the FASB issued Accounting Standards Update ("ASU") 2010-02, *Consolidation (Topic 810) — Accounting and Reporting for Decreases in Ownership of a Subsidiary — A Scope Clarification*. ASU 2010-02 clarifies the scope of the decrease in ownership provisions of Subtopic 810 and expands disclosure requirements about deconsolidation of a subsidiary or de-recognition of a group of assets. ASU 2010-02 is effective beginning in the first interim of annual reporting period ending on or after December 15, 2009. The adoption of ASU 2010-02-02 did not have an impact on our consolidated financial statements.

In October, 2009, the FASB issued ASU 2009-013, *Revenue Recognition (Topic 605) — Multiple-Deliverable Revenue Arrangements*. ASU 2009-13 revises certain accounting for revenue arrangements with multiple deliverables. In particular, when vendor specific objective evidence or third-party evidence for deliverables in an arrangement cannot be determined, ASU 2009-13 allows use of a best estimate of the selling price to allocate the arrangement consideration among them. ASU 2009-13 is effective for the first quarter of 2011, with early adoption permitted. We do not expect that the adoption of ASU 2009-13 will have a material impact on our consolidated financial statements.

In August, 2009, the FASB issued ASU 2009-05, an amendment to Accounting Standards Codification ("ASC") 820-10, *Fair Value Measurements and Disclosures — Overall* for measuring liabilities at fair value. ASU 2009-05 provides clarification that in certain circumstances in which a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using certain other valuation techniques. The guidance provided in this ASU is effective for the first reporting period beginning after issuance. This ASU had no impact on our consolidated financial statements.

In June, 2009, the FASB issued ASU 2009-01, *Generally Accepted Accounting Principles (Topic 105)* which amends the FASB ASC for the issuance of FASB Statement No. 168 "The FASB Accounting Standards Codification on the Hierarchy of Generally Accepted Accounting Principles". This statement establishes the FASB Accounting Standards Codification as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. This statement is effective for financial statements issued for interim and annual periods ending after September 15, 2009.

In December, 2007, the FASB issued ASC Topic 805, *Business Combinations*. The pronouncement requires the acquiring entity in a business combination to recognize only the assets acquired and liabilities assumed in a transaction (e.g., acquisition costs must be expensed when incurred), establishes the fair value at the date of acquisition as the initial measurement for all assets acquired and liabilities assumed, and requires expanded disclosures. ASC 805 is in effect for fiscal years beginning after December 15, 2008 (January 1, 2009, for our company). The adoption of ASC 805 did not have a material impact on our consolidated financial statements.

In December, 2007, the FASB issued ASC Topic 810, *Non-controlling Interests in Consolidated Financial Statements, an Amendment of ARB No. 51*. The pronouncement requires all entities to report non-controlling (minority) interests in subsidiaries as a component of shareholders' equity. ASC 810 is in effect for fiscal years beginning after December 15, 2008 (January 1, 2009, for our company). The adoption of ASC 810 did not have a material impact on our consolidated financial statements.

Item 7A. Qualitative and Quantitative Disclosures About Market Risk

As of December 31, 2009, we had $693,000 in cash held in foreign currencies based on the exchange rates at December 31, 2009. The balances for cash held overseas in foreign currencies are subject to exchange rate risk. We have a policy of maintaining cash balances in local currencies. Periodically, cash will be transferred in order to repay inter-company debts.

Item 8. Financial Statements and Supplementary Data

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Energy Focus, Inc.

We have audited the accompanying consolidated balance sheet of Energy Focus, Inc. (a Delaware corporation) and Subsidiaries (collectively the "Company") as of December 31, 2009, and the related consolidated statement of operations, comprehensive income (loss), shareholders' equity, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. .

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Energy Focus, Inc. and Subsidiaries as of December 31, 2009, and the results of their operations and their cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

We have also audited the retrospective adjustments to the 2008 and 2007 consolidated financial statements for the operations discontinued in 2009 as discussed in Note 4 to the consolidated financial statements and the retrospective adjustments to the disclosures for changes in the composition of reportable segments in 2008 and 2007, as discussed in Note 13 to the consolidated financial statements. Our procedures with respect to the discontinued operations included (1) obtaining the Company's underlying accounting analysis prepared by management of the retrospective adjustments for discontinued operations and comparing the retrospectively adjusted amounts per the 2008 and 2007 financial statements to such analysis, (2) comparing previously reported amounts to the previously issued financial statements for such years, (3) testing the mathematical accuracy of the accounting analysis, and (4) on a test basis, comparing the adjustments to retrospectively adjust the financial statements for discontinued operations to the Company's supporting documentation. Our procedures with respect to the changes in segments included (1) comparing the adjustment amounts of segment revenues, operating income, and assets to the Company's underlying analysis and (2) testing the mathematical accuracy of the reconciliations of segment amounts to the consolidated financial statements. In our opinion, such retrospective adjustments are appropriate and have been properly applied. However, we were not engaged to audit, review, or apply any procedures to the 2008 and 2007 consolidated financial statements of the Company other than with respect to the retrospective adjustments and, accordingly, we do not express an opinion or any other form of assurance on the 2008 and 2007 consolidated financial statements taken as a whole.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2, the Company incurred a net loss of $11,015,000 during the year ended December 31, 2009, negative cash flows from operations of $10,562,000 and, the Company's cash on-hand was only $1,062,000 as of December 31, 2009. In addition, as discussed in Note 9, the Company's line of credit came due in 2009, and the Company has not obtained any financing on a long-term basis. These factors, among others, as discussed in Note 2 to the financial statements, raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Plante & Moran, PLLC

Cleveland, Ohio
March 31, 2010

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Energy Focus, Inc.

We have audited, before the effects of the retrospective adjustments for the discontinued operations discussed in Note 4 and the retrospective adjustments for the change in the composition of reportable segments discussed in Note 13, the consolidated balance sheet of Energy Focus, Inc. (a Delaware corporation) and subsidiaries (collectively the "Company") as of December 31, 2008 and the related consolidated statements of operations, comprehensive income (loss), shareholders' equity, and cash flows for the years ended December 31, 2008 and 2007 (the 2008 and 2007 financial statements before the effects of the adjustments discussed in Note 4 are not presented herein). Our audits of the basic financial statements included the financial statement schedule listed in the index appearing under Item 15 (a)(2). These 2008 and 2007 financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

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

In our opinion, the consolidated financial statements referred to above, which are before the effects of the retrospective adjustments for the discontinued operations in Note 4 and the retrospective adjustments for the change in the composition of reportable segments discussed in Note 13, present fairly, in all material respects, the financial position of Energy Focus, Inc. and subsidiaries as of December 31, 2008, and the results of their operations and their cash flows for the years ended December 31, 2008 and 2007 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements as a whole, presents fairly, in all material respects, the information set forth therein.

We were not engaged to audit, review, or apply any procedures to the retrospective adjustments for the discontinued operations discussed in Note 4 and the retrospective adjustments for the change in the composition of reportable segments discussed in Note 13 and accordingly, we do not express an opinion or any other form of assurance about whether such adjustments are appropriate and have been properly applied. Those adjustments were audited by other auditors.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2, the Company incurred a net loss of $14,448,000 during the year ended December 31, 2008, negative cash flows from operations of $5,830,000 and, the Company's cash on-hand was $10,568,000 as of December 31, 2008. In addition as discussed in Note 9, the Company's line of credit is due in 2009. These factors, among others, as discussed in Note 2 to the financial statements raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ GRANT THORNTON LLP

Cleveland, Ohio
March 30, 2009

ENERGY FOCUS, INC.
CONSOLIDATED BALANCE SHEETS
As of December 31,
(amounts in thousands except share and per share amounts)

	2009	2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 1,062	$ 10,568
Accounts receivable trade, net of allowances for doubtful accounts of $317 in 2009 and $356 in 2008	2,922	2,617
Inventories, net	3,770	5,539
Prepaid and other current assets	509	310
Total current assets	8,263	19,034
Fixed assets, net	3,091	4,459
Goodwill, net	672	—
Intangible assets, net	2,750	—
Collateralized assets	2,500	—
Other assets	102	143
Total assets	$ 17,378	$ 23,636
LIABILITIES		
Current liabilities:		
Accounts payable	$ 1,677	$ 2,770
Accrued liabilities	1,854	1,602
Deferred revenue	295	191
Credit line borrowings	—	1,904
Current portion of long-term borrowings	—	54
Total current liabilities	3,826	6,521
Other deferred liabilities	149	81
Acquisition-related contingent liabilities	1,183	—
Long-term borrowings	715	245
Total liabilities	5,873	6,847
SHAREHOLDERS' EQUITY		
Preferred stock, par value $0.0001 per share:		
Authorized: 2,000,000 shares in 2009 and 2008 Issued and outstanding: no shares in 2009 and 2008	—	—
Common stock, par value $0.0001 per share:		
Authorized: 30,000,000 shares in 2009 and 2008 Issued and outstanding: 21,250,000 in 2009 and 14,835,000 in 2008	1	1
Additional paid-in capital	71,373	65,865
Accumulated other comprehensive income	474	251
Accumulated deficit	(60,343)	(49,328)
Total shareholders' equity	11,505	16,789
Total liabilities and shareholders' equity	$ 17,378	$ 23,636

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

ENERGY FOCUS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
For the years ended December 31,
(amounts in thousands except per share amounts)

	2009	2008	2007
Net sales	$ 12,489	$ 20,032	$ 19,761
Cost of sales	10,449	15,926	14,704
Gross profit	2,040	4,106	5,057
Operating expenses:			
Research and development	319	237	2,611
Sales and marketing	6,044	8,081	8,227
General and administrative	5,333	5,443	5,015
Loss on impairment	—	3,195	—
Restructuring	125	—	456
Total operating expenses	11,821	16,956	16,309
Loss from operations	(9,781)	(12,850)	(11,252)
Other income (expense):			
Other (expense) income	47	(91)	150
Interest (expense) income	(73)	18	305
Loss from continuing operations before income taxes	(9,807)	(12,923)	(10,797)
(Provision for) benefit from income taxes	(7)	250	(190)
Net loss from continuing operations	$ (9,814)	$ (12,673)	$ (10,987)
Discontinued operations:			
Loss before income taxes of discontinued operations, including loss on disposal of discontinued operations of $664,000 in 2009	(1,201)	(1,775)	(329)
Provision for income taxes	—	—	(1)
Loss from discontinued operations	(1,201)	(1,775)	(330)
Net loss	$ (11,015)	$ (14,448)	$ (11,317)
Net loss per share — basic and diluted	$ (0.70)	$ (1.02)	$ (0.98)
Shares used in computing net loss per share - basic and diluted	15,763	14,182	11,500

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

ENERGY FOCUS, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
For the years ended December 31,
(amounts in thousands)

	2009	2008	2007
Net loss	$ (11,015)	$ (14,448)	$ (11,317)
Other comprehensive income (loss):			
Foreign currency translation adjustments	223	(564)	283
Net unrealized loss on securities	—	—	(69)
Comprehensive loss	$ (10,792)	$ (15,012)	$ (11,103)

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

ENERGY FOCUS, INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
For the years ended December 31, 2009, 2008, and 2007
(amounts in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Retained Earnings (Accumulated Deficit)	Total
	Shares	Amount				
Balances, December 31, 2006	11,394	$ 1	$ 53,841	$ 601	$ (23,563)	$ 30,880
Exercise of common stock warrants	86		295			295
Exercise of common stock options	140		651			651
Issuance of common stock under employee stock option purchase plan	3		18			18
Stock-based compensation			877			877
Net unrealized gain on securities				(69)		(69)
Foreign currency translation adjustment				283		283
Net loss					(11,317)	(11,317)
Balances, December 31, 2007	11,623	$ 1	$ 55,682	$ 815	$ (34,880)	$ 21,618
Private investment public equity, net of expenses	3,184		9,335			9,335
Exercise of common stock options	23		126			126
Issuance of common stock under employee stock option purchase plan	5		7			7
Stock-based compensation			715			715
Foreign currency translation adjustment				(564)		(564)
Net loss					(14,448)	(14,448)
Balances, December 31, 2008	14,835	$ 1	$ 65,865	$ 251	$ (49,328)	$ 16,789
Issuance of common stock under Rights Offering	5,168		3,344			3,344
Issuance of common stock	228		153			153
Issuance of common stock under employee stock option purchase plan	19		11			11
Issuance of common stock for acquisition of subsidiary	1,000		1,239			1,239
Stock-based compensation			624			624
Warrants issued for financing			137			137
Foreign currency translation adjustment				223		223
Net loss					(11,015)	(11,015)
Balances, December 31, 2009	21,250	$ 1	$ 71,373	$ 474	$ (60,343)	$ 11,505

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

ENERGY FOCUS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the years ended December 31,
(amounts in thousands)

	2009	2008	2007
Cash flows from operating activities:			
Net loss	$ (11,015)	$ (14,448)	$ (11,317)
Less: loss from discontinued operations	(1,201)	(1,775)	(330)
Net loss from continuing operations	(9,814)	(12,673)	(10,987)
Adjustments to reconcile net loss from continuing operations to net cash used in operating activities:			
Loss on impairment	—	3,195	—
Depreciation	987	1,151	1,144
Stock-based compensation	624	715	877
Provision for doubtful accounts receivable	45	(52)	337
Unrealized loss from marketable securities	—	—	69
Deferred taxes	—	(255)	177
Deferred revenue	104	(52)	244
Loss on disposal of fixed assets	44	—	—
Changes in assets and liabilities:			
Accounts receivable, inventories, and other assets	(906)	1,374	2,811
Accounts payable and accrued liabilities	(1,225)	902	(2,007)
Total adjustments	(327)	6,978	3,652
Net cash used by continuing operations	(10,141)	(5,695)	(7,335)
Net cash used in discontinued operations	(421)	(135)	(167)
Net cash used in operating activities	(10,562)	(5,830)	(7,502)
Cash flows from investing activities:			
Sale of short-term investments	—	—	49,441
Purchase of short-term investments	—	—	(37,090)
Cash paid for acquisition of subsidiary	(1,500)	—	—
Acquisition of fixed assets	(182)	(358)	(490)
Net cash (used in) provided by continuing investing activities	(1,682)	(358)	11,861
Net cash provided by (used by) discontinued investing activities	765	(37)	(19)
Net cash (used in) provided by investing activities	(917)	(395)	11,842
Cash flows from financing activities:			
Cash proceeds from issuances of common stock, net	3,508	9,335	—
Cash proceeds from exercise of stock options	—	133	964
Cash proceeds from notes payable, net	137	—	—
Net payments on credit line borrowings	(1,776)	802	(27)
Net borrowing/(payments) on short and long-term bank borrowings	483	(1,672)	(590)
Other liabilities	—	—	62
Net cash provided by continuing financing activities	2,352	8,598	409
Net cash used in discontinued financing activities	(428)	(105)	(2)
Net cash provided by financing activities	1,924	8,493	407
Effect of exchange rate changes on cash	49	(112)	(40)
Net (decrease) increase in cash and cash equivalents	(9,506)	2,156	4,707
Cash and cash equivalents at beginning of year	10,568	8,412	3,705
Cash and cash equivalents at end of year	$ 1,062	$ 10,568	$ 8,412

Continued on following page

ENERGY FOCUS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the years ended December 31,
(amounts in thousands)

	2009	2008	2007
Supplemental Information			
Interest paid:	$ 98	$ 198	$ 334
Non-cash investing and financing activities:			
Fully depreciated assets disposed of	$ 1,149	$ 35	$ 205
The company purchased all of the members' interest of Stones River Companies, LLC for $1,500. In conjunction with the acquisition, liabilities were incurred and common stock was issued as follows:			
Fair value of assets acquired	$ 4,700	$ —	$ —
Cash paid for the members' interest	(1,500)	—	—
Liabilities incurred and common stock issued	3,200	—	—

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

1. Nature of Operations

Energy Focus, Inc. and its subsidiaries ("the company") engage in the design, development, manufacturing, marketing, and installation of energy-efficient lighting systems where the company serves two principal markets: commercial/industrial lighting and pool lighting. In 2009, the company further evolved its business strategy to include providing its customers with turnkey, comprehensive energy-efficient lighting solutions, which use, but are not limited to, its patented and proprietary technology. The company's solutions include light-emitting diode ("LED"), ceramic metal halide ("CMH"), fiber optic ("EFO"), high-intensity discharge ("HID"), and other highly energy-efficient lighting technologies. Typical savings of the company's current technology approximates 80% in electricity costs, while providing full-spectrum light closely simulating daylight colors. The company's strategy also incorporates continued investment into the research of new and emerging energy sources including, but not limited to, solar energy.

2. Summary of Significant Accounting Policies

The significant accounting policies of Energy Focus, which are summarized below, are consistent with generally accepted accounting principles and reflect practices appropriate to the business in which it operates.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates include, but are not limited to, the establishment of reserves for accounts receivable, sales returns, inventory obsolescence, and warranty claims; the useful lives for property, equipment, and intangible assets; and stock-based compensation. In addition, estimates and assumptions associated with the determination of fair value of financial instruments and evaluation of goodwill and long-lived assets for impairment requires considerable judgment. Actual results could differ from those estimates.

Reclassifications

Certain prior year amounts have been reclassified within the Consolidated Financial Statements to be consistent with the current year presentation.

Basis of Presentation

The Consolidated Financial Statements ("financial statements") include the accounts of the company and its subsidiaries, Stones River Companies, LLC ("SRC") in Nashville, Tennessee, and Crescent Lighting Limited ("CLL") located in the United Kingdom. LBM Lichtleit-Fasertechnik ("LBM") located in Berching, Germany, was sold in December, 2009 and is included in discontinued operations. All significant inter-company balances and transactions have been eliminated.

Going Concern

The company has experienced net losses of $11,015,000 and $14,448,000 for the years ended December 31, 2009 and 2008, respectively. As of December 31, 2009, the company had an accumulated deficit of $60,343,000. Although management believes that it has addressed many of the legacy issues that have historically burdened the company's financial performance, the company still faces challenges in order to reach profitability. In order for the company to attain profitability and growth, it will need to successfully address these challenges, including the continuation of cost reductions throughout its organization, execution of its marketing and sales plans for its new turnkey energy-efficient lighting solutions business, continued evaluation and divestiture of non-core business product lines, and continued improvements in its supply chain performance.

The company's independent public accounting firm has issued an opinion in the company's 2009 Annual Report on Form 10-K raising substantial doubt as to the company's ability to continue as a going concern. This opinion stems from the company's historical poor operating performance, the on-going global economic crisis, and the company's historical inability to generate sufficient cash flow to meet obligations and sustain operations without obtaining additional external financing. Although the company is optimistic about obtaining the funding necessary for it to continue as a going concern, there can be no assurances that this objective will be successful. The company is currently aggressively pursuing the following external funding sources:

- obtain financing and/or grants available through federal, state, and/or local governmental agencies,
- obtain financing from various financial institutions,
- obtain financing from non-traditional investment capital organizations,
- potential sale or divestiture of one or more operating units, and
- obtain funding from the sale of our common stock or other equity instruments.

Obtaining financing through the above-mentioned mechanisms contains risks, including:

- government stimulus and/or grant money is not allocated to us despite our focus on the design, development, and manufacturing of energy efficient lighting systems,
- loans or other debt instruments may have terms and/or conditions, such as interest rate, restrictive covenants, and control or revocation provisions, which are not acceptable to management or our Board of Directors,
- the current global economic crisis combined with our current financial condition may prevent us from being able to obtain any debt financing,
- financing may not be available for parties interested in pursuing the acquisition of one or more of our operating units, and
- additional equity financing may not be available to us in the current economic environment and could lead to further dilution of shareholder value for current shareholders of record.

Revenue Recognition

Revenue is recognized when it is realized or realizable, has been earned, and when all of the following has occurred:

- persuasive evidence or an arrangement exists, e.g., a sales order, a purchase order, or a sales agreement,
- shipment has occurred, with the standard shipping term being F.O.B. ship point, or services provided on a proportional performance basis or installation have been completed,
- price to the buyer is fixed or determinable, and
- collectability is reasonably assured.

Revenues from our **products-based** business are generally recognized upon shipping based upon the following:

- all sales made by the company to its customer base are non-contingent, meaning that they are not tied to that customer's resale of products,
- standard terms of sale contain shipping terms of F.O.B. ship point, meaning that title is transferred when shipping occurs, and
- there are no automatic return provisions that allow the customer to return the product in the event that the product does not sell within a defined timeframe.

Revenues from our **products-based** business that incorporate **specifically-defined installation** services have historically been recognized as follows:

- product sale at completion of installation, and
- installation service at completion of installation.

For 2010, revenues from our l**ighting solutions-based** business will generally be larger contracts and may range from three to eighteen months in duration. Furthermore, these contracts generally contain multiple deliverables which entitle us to record revenue associated with each element of these contracts based upon that individual element's fair value or percentage-of-completion basis based upon the percentage of costs incurred. Fair value is generally defined as the price charged for that element that has value to the customer on a stand-alone basis. The elements of a multiple deliverables contract which would have value on a stand-alone basis include:

- comprehensive site assessment, which includes a review of the current lighting requirements and energy usage at the customer's facility,
- site field verification, where we perform a test implementation of our energy management system at a customer's facility upon request,
- utility incentive and government subsidy management, where we assist our customers in identifying, applying for and obtaining available utility incentives or government subsidies,
- engineering design, which involves designing a customized system to suit our customer's facility lighting and energy management needs, and providing the customer with a written analysis of the potential energy savings and lighting and environmental benefits associated with the designed system,
- project management, which involves our working with the electrical contractor in overseeing and managing all phases of implementation from delivery through installation for a single facility or through multi-facility roll-outs tied to a defined project schedule,
- installation services, which we provide through our national network of qualified third-party installers, and
- recycling in connection with our retrofit installations, where we remove, dispose of and recycle our customer's legacy lighting fixtures.

The company warrants its products against defects or workmanship issues. We set up allowances for estimated returns, discounts, and warranties upon recognition of revenue, and these allowances are adjusted periodically to reflect actual and anticipated returns, discounts, and warranty expenses. These allowances are based on past history and historical trends, current economic conditions, and contractual terms.

Cash Equivalents

The company considers all highly liquid investments purchased with original maturity of three months or fewer to be cash equivalent. The company has $367,000 in cash on deposit with Silicon Valley Bank in the United States as of December 31, 2009. The remaining cash of the company is on deposit with a European bank in the United Kingdom.

Inventories

The company states inventories at the lower of standard cost (which approximates actual cost determined using the first-in-first-out method) or market. The company establishes provisions for excess and obsolete inventories after evaluation of historical sales, current economic trends, forecasted sales, product lifecycles, and current inventory levels. Charges to cost of sales for excess and obsolete inventories amounted to $533,000, $1,503,000, and $677,000 in 2009, 2008, and 2007, respectively.

Accounts Receivable

The company's customers currently are concentrated in the United States and Europe. In the normal course of business, the company extends unsecured credit to its customers related to the sale of its products. Typical credit terms require payment within thirty days from the date of delivery or service. The company evaluates and monitors the creditworthiness of each customer on a case-by-case basis. The company provides allowances for sales returns and doubtful accounts based on its continuing evaluation of its customers' ongoing requirements and credit risk. The company writes-off accounts receivable when management deems that they have become uncollectible, and payments subsequently received on such receivables are credited to the allowance for doubtful accounts. The company does not generally require collateral from its customers.

Income Taxes

As part of the process of preparing its consolidated financial statements, the company estimates its income tax liability in each of the jurisdictions in which it does business. This process involves estimating the company's actual current tax expense together with assessing temporary differences resulting from differing treatment of items, such as deferred revenues, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included in the consolidated balance sheet. The company then assesses the likelihood that these deferred tax assets will be recovered from future taxable income and, to the extent to which the company believes that recovery is more likely than not, or is unknown, the company establishes a valuation allowance.

Significant management judgment is required in determining the provision for income taxes, deferred tax assets and liabilities, and any valuation allowance recorded against such deferred tax assets. At December 31, 2009, the company has a full valuation allowance against deferred tax assets in the United States due to uncertainties related to its ability to utilize those deferred tax assets. The valuation allowance is based on estimates of taxable income by jurisdiction and the periods over which its deferred tax assets could be recoverable.

Collateralized Assets

The company maintains $2,500,000 of cash securitization related to the company's $10,000,000 surety bonding program associated with the acquisition of SRC. This cash is secured for a period of not less than 24 months, unless the company is able to provide sufficient alternative means of securitization satisfactory to the surety carrier.

Long-Lived Assets

Fixed assets are stated at cost and include expenditures for additions and major improvements. Expenditures for repairs and maintenance are charged to operations as incurred. The company uses the straight-line method of depreciation over their estimated useful lives of the related assets (generally two to fifteen years) for financial reporting purposes. Accelerated methods of depreciation are used for federal income tax purposes. When assets are sold or otherwise disposed of, the cost and accumulated depreciation are removed from the accounts and any gain or loss is reflected in the consolidated statement of operations.

Long-lived assets are reviewed for impairment whenever events or circumstances indicate the carrying amount may not be recoverable. Events or circumstances that would result in an impairment review primarily include operations reporting losses, a significant change in the use of an asset, or the planned disposal or sale of the asset. The asset would be considered impaired when the future net undiscounted cash flows generated by the asset are less than its carrying value. An impairment loss would be recognized based on the amount by which the carrying value of the asset exceeds its fair value, as determined by quoted market price (if available) or the present value of expected future cash flows.

Goodwill represents the excess of the purchase price over the fair value of identifiable net assets acquired in business acquisitions. The company evaluates goodwill for impairment at least annually. Evaluating goodwill for impairment involves a two-step process. The first step is to estimate the fair value of the reporting unit. There are several valuation methods for estimating a reporting unit's fair value, including market quotations and discounted projected future net earnings or net cash flows and multiples of earnings. If the carrying amount of a reporting unit, including goodwill, exceeds the estimated fair value, a second step is performed. Under the second step, the identifiable assets, including identifiable intangible assets and liabilities of the reporting unit are estimated at fair value as of the current testing date. The excess of the estimated fair value of the reporting unit over the estimated fair value of net assets establishes the implied value of goodwill. The excess of the recorded goodwill over the implied value is charged to earnings as an impairment loss. A significant amount of judgment is required in estimating fair value of the reporting unit and performing these tests.

As a result of the company's testing, in the fourth quarter of 2008, the company recorded a non-cash impairment charge for goodwill of $4,305,000, which represented the entire carrying value of goodwill at December 31, 2008. Of this amount, $3,195,000 relates to continuing operations. As of December 31, 2009, the company had $672,000 of goodwill recorded on its Consolidated Financial Statements related to the December 31, 2009 acquisition of SRC. The company engaged an independent third-party expert to assist in the allocation of the purchase price to the various specific separately identifiable intangible assets, including goodwill, which is described more fully in Note 3.

Fair Value of Financial Instruments

Carrying amounts of certain financial instruments including cash and cash equivalents, accounts receivable, and accounts payable approximate fair value due to their short maturities. Based on borrowing rates currently available to the company for loans with similar terms, the carrying value of long-term debt obligations also approximates fair value.

Certain Risks and Concentrations

The company invests its excess cash in demand deposits and high-grade short-term securities with a major financial institution that is insured by the Federal Deposit Insurance Corporation ("FDIC") up to $250,000 and the Securities Investor Protection Corporation ("SIPC") up to $500,000 of primary net equity protection including $100,000 for claims for cash. At times, the company's cash balances exceed the amounts insured by the FDIC. As of December 31, 2009, the company does not have any short-term securities investments. The company has not experienced any losses in such accounts and believes that it is not exposed to significant risk of loss.

The company sells its products and solutions services through a combination of direct sales employees, independent sales representatives, and various distributors in different geographic markets throughout the world. The company performs ongoing credit evaluations of its customers and generally does not require collateral. Although the company maintains allowances for potential credit losses that it believes to be adequate, a payment default on a significant sale could materially and adversely affect its operating results and financial condition.

At December 31, 2009, two customers accounted for 43.0% of the net accounts receivable, and one customer accounted for 12.8% of the net accounts receivable at December 31, 2008. For the years ended December 31, 2009, 2008 and 2007, no single customer accounted for more than 10% of net sales.

The company requires substantial amounts of purchased materials from selected vendors. With specific materials, the company purchases 100% of its requirement from a single vendor. Included in purchased materials are small diameter stranded fiber, plastic fixtures, lamps, reflectors, and power supplies. Substantially all of the materials the company requires are in adequate supply. However, the availability and costs of materials may be subject to change due to, among other things, new laws or regulations, suppliers' allocation to other purchasers, interruptions in production by suppliers, and changes in exchange rates and worldwide price and demand levels. The company's inability to obtain adequate supplies of materials for its products at favorable prices could have a material adverse effect on its business, financial position, or results of operations by decreasing our profit margins and by hindering its ability to deliver products to its customers on a timely basis.

Research and Development

Research and development expenses include salaries, contractor and consulting fees, supplies and materials, as well as costs related to other overhead such as depreciation and facilities costs. Research and development costs are expensed as they are incurred. The company's research and development expenses are reduced on a proportional performance basis under Defense Advanced Research Projects Agency ("DARPA") Small Business Innovation Research ("SBIR") development contracts. In 2007, SBIR contracts were signed totaling $1,500,000 to be reimbursed over a two-year recovery period. During 2009, additional SBIR contracts were signed totaling $1,707,000 to be reimbursed through July, 2010. At December 31, 2009, $1,409,000 remained as unrecognized reductions of gross research and development expenses for these contracts. The company is currently pursuing additional contracts through various government agencies, and anticipates being granted additional contracts during 2010.

Credits received from government contracts for research for which the company is the beneficiary during the fiscal year are recorded as a reduction to research and development expense.

When the government contract is for the delivery of a product or service, the company recognizes revenue from those government projects according to proportional performance method or actual deliveries made. Costs related to the completion of the sale are charged to cost of sales in the same period in which the revenue is recognized.

Earnings (Loss) Per Share

Basic loss per share is computed by dividing net loss available to common shareholders by the weighted average number of common shares outstanding for the period. Diluted loss per share is computed giving effect to all dilutive potential common shares that were outstanding during the period. Dilutive potential common shares consist of incremental shares upon exercise of stock options and warrants, unless the effect would be anti-dilutive.

A reconciliation of the numerator and denominator of basic and diluted loss per share is provided as follows (in thousands, except per share amounts):

	Years ended December 31,		
	2009	2008	2007
Numerator — basic and diluted loss per share:			
Net loss	$ (11,015)	$ (14,448)	$ (11,317)
Denominator — basic and diluted loss per share:			
Weighted average shares outstanding	15,763	14,182	11,500
Basic and diluted net loss per share	$ (0.70)	$ (1.02)	$ (0.98)

Options and warrants to purchase approximately 6,159,000 shares, 5,329,000 shares, and 1,547,000 shares of common stock were outstanding at December 31, 2009, 2008, and 2007, respectively, but were not included in the calculation of diluted loss per share because their inclusion would have been anti-dilutive.

Stock-Based Compensation

The company accounts for stock-based compensation following Auditing Standards Codification ("ASC") Topic Number 718, *Compensation — Stock Compensation* ("ASC 718"). ASC 718 focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. The statement requires entities to recognize compensation expense for awards of equity instruments to employees based on grant-date fair value of those awards (with limited exceptions). ASC 718 also requires the benefits of tax deductions in excess of recognized compensation expense to be reported as a financing cash flow rather than as an operating cash flow as prescribed under the prior accounting rules. For the years ended December 31, 2009, 2008, and 2007, the company recorded compensation expense of $624,000, $715,000, and $877,000, respectively. At December 31, 2009, the company had unamortized compensation expense of $888,000. The remaining weighted average life is approximately 1.7 years as of December 31, 2009. These costs will be charged to expense, amortized on a straight-line method, in future periods in accordance with ASC 718 accounting. At December 31, 2009, the intrinsic value of total options outstanding was $4,000.

The expenses for 2009, 2008, and 2007 include both the costs of awards granted in those years and those unvested at the beginning of 2006. Both the expense and future unearned compensation have been estimated using the Black-Scholes option pricing model. Estimates utilized in the calculation include the expected life of the option, risk-free interest rate, and volatility and are further comparatively detailed below. The estimated expected life of the option is calculated based on contractual life of the option, the vesting life of the option, and historical exercise patterns of vested options. The volatility estimates are calculated using historical pricing experience.

As of December 31, 2009, the company has one stock-based employee compensation plan, which is described more fully in Note 11. The company accounts for equity instruments issued to non-employees in accordance with the provisions of ASC 718 and related interpretations. Under these principles, the equity instruments are valued at the fair value, which is computed based on stock price on the date of grant or other measurement date, exercise price, estimated life, stock volatility, and the risk-free rate of interest.

The fair value of each option grant and stock purchase plan grant combined is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions used for grants in 2008, 2007, and 2006.

	2009	2008	2007
Fair value of options issued	$ 0.46	$ 1.04	$ 3.01
Exercise price	$ 0.73	$ 1.91	$ 6.30
Expected life of option	4.0 years	4.0 years	4.0 years
Risk-free interest rate	1.88%	2.36%	4.35%
Expected volatility	88.26%	72.53%	56.29%
Dividend yield	0%	0%	0%

On May 29, 2009, the company's five senior executive officers agreed to accept voluntary salary reductions for the remainder of the 2009 calendar year in exchange for the issuance of restricted shares of common stock as authorized under the company's 2008 Stock Incentive Plan. Two other key executives of the company also accepted salary reductions for the balance of the year in exchange for restricted shares. Each officer and key executive voluntarily accepted a ten percent ("10%") salary reduction for the remainder of 2009, except for one officer who voluntarily accepted a forty percent ("40%") decrease for the remainder of 2009. The number of restricted shares of common stock issued to each officer and executive was equal to the dollar value of the individual's salary reduction divided by the closing price per share of the company's common stock on May 29, 2009. The total number of restricted shares of common stock issued to these officers and executives was 209,000.

On December 31, 2009, the company's five senior executive officers, along with two other key executives of the company, agreed to extend these salary reductions through June 30, 2010. Each officer and key executive voluntarily accepted a ten percent ("10%") salary reduction for this six month period, except for one officer who voluntarily accepted a forty percent ("40%") decrease for this six month period. The number of restricted shares of common stock issued to each officer and executive was equal to the dollar value of the individual's salary reduction divided by the closing price per share of the company's common stock on December 30, 2009. The total number of restricted shares of common stock issued to these officers and executives was 209,000. The company reserves the right to extend these salary reductions beyond that date.

On May 29, 2009, two members of the company's Board of Directors also voluntarily relinquished their directors' fee for the balance of 2009 in exchange for restricted shares of common stock on the same terms as the shares granted to the officers. The number of restricted shares of common stock issued to each director was equal to the dollar value of the individual's relinquished director's fee divided by the closing price per share of the company's common stock on May 29, 2009. The total number of restricted shares of common stock issued to these directors was 19,000.

Foreign Currency Translation

The company's international subsidiary uses its local currency as its functional currency. Assets and liabilities are translated at exchange rates in effect at the balance sheet date and income and expense accounts at average exchange rates during the year. Resulting translation adjustments are recorded directly to accumulated comprehensive income within the statement of shareholders' equity. Foreign currency transaction gains and losses are included as a component of interest income and other. Gains and losses from foreign currency translation are included as a separate component of comprehensive income (expense) within the consolidated statement of comprehensive income (loss).

Advertising Expenses

The company expenses the costs of advertising, which consists of costs for the placement of advertisements in various media. Advertising expenses were $368,000, $601,000, and $464,000 for the years ended December 31, 2009, 2008, and 2007, respectively.

Product Warranties

The company warrants finished goods against defects in material and workmanship under normal use and service for periods of one to three years for illuminators and fiber. Settlement costs consist of actual amounts expensed for warranty services which are largely a result of third-party service calls, and the costs of replacement products. A liability for the estimated future costs under product warranties is maintained for products outstanding under warranty and is included in accruals and other liabilities in the Consolidated Balance Sheet. The warranty activity for the respective years is as follows (in thousands):

	Year ended December 31,	
	2009	2008
Balance at the beginning of the year	$ 308	$ 229
Accruals for warranties issued	290	336
Settlements made during the year (in cash or in kind)	(387)	(257)
Balance at the end of the year	$ 211	$ 308

Recent Accounting Pronouncements

In January 2010, the FASB issued Accounting Standards Update ("ASU") 2010-02, *Consolidation (Topic 810) — Accounting and Reporting for Decreases in Ownership of a Subsidiary — A Scope Clarification*. ASU 2010-02 clarifies the scope of the decrease in ownership provisions of Subtopic 810 and expands disclosure requirements about deconsolidation of a subsidiary or de-recognition of a group of assets. ASU 2010-02 is effective beginning in the first interim of annual reporting period ending on or after December 15, 2009. The adoption of ASU 2010-02-02 did not have an impact on the company's Consolidated Financial Statements.

In October 2009, the FASB issued ASU 2009-013, *Revenue Recognition (Topic 605) — Multiple-Deliverable Revenue Arrangements*. ASU 2009-13 revises certain accounting for revenue arrangements with multiple deliverables. In particular, when vendor specific objective evidence or third-party evidence for deliverables in an arrangement cannot be determined, ASU 2009-13 allows use of a best estimate of the selling price to allocate the arrangement consideration among them. ASU 2009-13 is effective for the first quarter of 2011, with early adoption permitted. The company does not expect that the adoption of ASU 2009-13 will have a material impact on its Consolidated Financial Statements.

In August 2009, the FASB issued ASU 2009-05, an amendment to Accounting Standards Codification ("ASC") 820-10, *Fair Value Measurements and Disclosures — Overall* for measuring liabilities at fair value. ASU 2009-05 provides clarification that in certain circumstances in which a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure fair value using certain other valuation techniques. The guidance provided in this ASU is effective for the first reporting period beginning after issuance. This ASU had no impact on the company's Consolidated Financial Statements.

In June 2009, the FASB issued ASU 2009-01, *Generally Accepted Accounting Principles (Topic 105)* which amends the FASB ASC for the issuance of FASB Statement No. 168 "The FASB Accounting Standards Codification on the Hierarchy of Generally Accepted Accounting Principles". This statement establishes the FASB Accounting Standards Codification as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. This statement is effective for financial statements issued for interim and annual periods ending after September 15, 2009.

In December 2007, the FASB issued ASC Topic 805, *Business Combinations*. The pronouncement requires the acquiring entity in a business combination to recognize only the assets acquired and liabilities assumed in a transaction (e.g., acquisition costs must be expensed when incurred), establishes the fair value at the date of acquisition as the initial measurement for all assets acquired and liabilities assumed, and requires expanded disclosures. ASC 805 is in effect for fiscal years beginning after December 15, 2008 (January 1, 2009, for the company). The adoption of ASC 805 did not have a material impact on the company's Consolidated Financial Statements.

In December 2007, the FASB issued ASC Topic 810, *Non-controlling Interests in Consolidated Financial Statements, an Amendment of ARB No. 51*. The pronouncement requires all entities to report non-controlling (minority) interests in subsidiaries as a component of shareholders' equity. ASC 810 is in effect for fiscal years beginning after December 15, 2008 (January 1, 2009, for the company). The adoption of ASC 810 did not have a material impact on the company's Consolidated Financial Statements.

3. Acquisition

On December 31, 2009, the Company acquired 100% of the members' interest of SRC, a Tennessee limited liability company, from TLC Investments, LLC ("TLC"), a Tennessee limited liability company for a combination of cash, convertible debt, a contingent based earn-out, and shares of the company's common stock. SRC is a lighting retro fit company and an energy systems and solutions provider located in Nashville Tennessee. SRC provides the company with the reputation and strong brand recognition within in the existing public sector buildings market based upon its 20 years of experience serving these markets. Given the significant existing contract backlog, pipeline of potential future contracts, proven delivery performance and strong existing relationships with its customer base that SRC brings to the company; it will be able to readily penetrate these markets with its unique and proven technology while simultaneously benefiting from the other natural synergies that exist between our two businesses. This acquisition is the foundation by which the company will emerge into a national turn-key energy solutions provider.

The company acquired approximately $4,700,000 in assets, including accounts receivable, fixed assets, and other intangible assets. $672,000 of the purchase price was recorded on the company's Consolidated Balance Sheet as goodwill. Purchase price consideration was paid in the form of $1,500,000 of cash, 1,000,000 shares of Energy Focus Class A common stock, and a $500,000 note convertible into 500,000 shares of the company's Class A common stock. The transaction also includes performance-related contingent consideration including a 2.5%, payout on the annual revenues of the acquired business over the next 42 months, and a $500,000 fee if the market price of the company's common stock is not equal to or greater than $2.00 per share for at least twenty trading days between June 30, 2010 and June 30, 2013.

The acquisition has been accounted for as a stock purchase and, accordingly, has been included in the accompanying Consolidated Financial Statements of the company as of December 31, 2009. Due to the absence of activity between the purchase date, December 31, 2009, and the date of our Consolidated Financial Statements, there were no results of operations to be reported. In addition, comparative pro forma information has not been presented as SRC was not a comparable stand-alone entity prior to the acquisition.

The purchase price has been allocated based on the fair value of the assets acquired leading to the purchase price allocation as follows (in thousands):

Assets acquired:	Amortization Life (in years)	Amount
Accounts receivable		$ 1,258
Fixed asset		20
Goodwill	n/a	672
Intangible assets:		
Tradename	10	500
Client relationships	5	2,250
Total purchase price		$ 4,700

The purchase price in excess of the fair value of the tangible assets acquired has been allocated to intangible assets and goodwill. The company engaged an independent third-party expert to assist in the allocation of the purchase price to the various specific separately identifiable intangible assets. The methods utilized by this third-party are based upon generally accepted accounting valuation conventions used in acquisition-related valuations and include peer volatility analysis, discounted cash flow analysis, annuity stream valuation and earnings based valuation techniques. These conventions were reviewed and approved by management as well as the company's current independent public accounting firm.

These intangible assets have estimated useful lives as set forth in the table above and amortization expense for the next fiscal years for the acquired intangible assets is estimated to be as follow (in thousands):

Year ending December 31,	Amount
2010	$ 1,073
2011	649
2012	420
2013	253
2014	105
2015 and thereafter	250
Total amortization expense	$ 2,750

Of the intangible assets acquired, $672,000 was assigned to goodwill. None of the goodwill is expected to be deductible for tax purposes.

4. Discontinued Operations

As part of the company's strategy of evaluating the viability of its non-core businesses and its aggressive pursuit of capital funding, the company determined that its German subsidiary was not directly aligned with its objective to become a leading provider of turnkey, comprehensive energy-efficient lighting systems. Therefore, in the third quarter of 2009, the company committed to a plan to divest its German subsidiary, LBM.

In December 2009, the company completed the sale of its ownership rights in LBM for $225,000 comprised of cash and a promissory note. Furthermore, the company will receive an earn out equal to ten percent ("10%") of post-acquisition, pre-amortization, pre-tax profit for a period of 24 months commencing January, 2010. Excluding this earn out, the company recorded a loss on disposal of subsidiary of $664,000. As part of this transaction, the purchaser assumed all rights to both tangible and intangible assets as well as all of the liabilities of LBM.

The following table summarizes the components included with net loss from discontinued operations within the company's Consolidated Statement of Operations (amounts in thousands):

	December 31,		
	2009	2008	2007
Net sales	$ 1,462	$ 2,787	$ 3,108
Total expenses	2,663	4,562	3,437
Loss from operations of discontinued operations	(1,201)	(1,775)	(329)
Provision for income tax	—	—	(1)
Net loss from discontinued operations	$ (1,201)	$ (1,775)	$ (330)

The following table summarizes the components included within the total assets and liabilities of discontinued operations within the company's Consolidated Balance Sheet for the period indicated (amounts in thousands):

	December 31, 2008
Cash and cash equivalents	$ 45
Accounts receivable trade	207
Inventories	728
Prepaid and other current assets	10
Fixed assets	540
Other assets	142
Total assets of discontinued operations	$ 1,672
Accounts payable	$ 30
Accrued expenses	125
Draw on line of credit	128
Current portion of long-term borrowings	54
Long-term borrowings	245
Total liabilities of discontinued operations	$ 582

5. Inventories (in thousands):

	December 31,	
	2009	2008
Raw materials	$ 2,785	$ 4,738
Inventory reserve	(1,010)	(1,795)
Finished goods	1,995	2,596
	$ 3,770	$ 5,539

6. Fixed Assets (in thousands):

	December 31, 2009	December 31, 2008
Equipment (useful life 3 - 15 years)	$ 7,856	$ 8,632
Tooling (useful life 2 - 5 years)	2,305	2,752
Furniture and fixtures (useful life 5 years)	168	200
Computer software (useful life 3 years)	476	483
Leasehold improvements (the shorter of useful life or lease life)	911	1,639
Construction in progress	—	60
Fixed assets at cost	11,716	13,766
Less: accumulated depreciation	(8,625)	(9,307)
Fixed assets, net	$ 3,091	$ 4,459

7. Goodwill

Goodwill represents the excess of the purchase price over the fair value of identifiable net assets acquired in business acquisitions. The company evaluates goodwill for impairment at least annually. Evaluating goodwill for impairment involves a two-step process. The first step is to estimate the fair value of the reporting unit. There are several valuation methods for estimating a reporting unit's fair value, including market quotations and discounted projected future net earnings or net cash flows and multiples of earnings. If the carrying amount of a reporting unit, including goodwill, exceeds the estimated fair value, a second step is performed. Under the second step, the identifiable assets, including identifiable intangible assets and liabilities of the reporting unit are estimated at fair value as of the current testing date. The excess of the estimated fair value of the reporting unit over the estimated fair value of net assets establishes the implied value of goodwill. The excess of the recorded goodwill over the implied value is charged to earnings as an impairment loss. A significant amount of judgment is required in estimating fair value of the reporting unit and performing these tests.

As a result of the company's testing, in the fourth quarter of 2008, the company recorded a non-cash impairment charge for goodwill of $4,305,000, which represented the entire carrying value of goodwill at December 31, 2008. Of this amount, $3,195,000 relates to continuing operations. As of December 31, 2009, the company had $672,000 of goodwill recorded on its Consolidated Financial Statements related to the December 31, 2009 acquisition of SRC. The company engaged an independent third-party expert to assist in the allocation of the excess purchase price to the various specific separately identifiable intangible assets, including goodwill, which is described more fully in Note 3.

The changes in the carrying amounts of goodwill for the year ended December 31, 2009 was as follows (in thousands):

	Goodwill Net Carrying Amount
Balance as of December 31, 2007	$ 4,359
Impairment	(4,305)
Foreign currency translation	(54)
Balance as of December 31, 2008	—
Acquisition	672
Balance as of December 31, 2009	$ 672

8. Accruals and Other Current Liabilities (in thousands):

	December 31, 2009	December 31, 2008
Accrued sales commissions and incentives	$ 79	$ 320
Accrued warranty expense	211	308
Accrued professional fees	282	172
Accrued employee benefits	376	363
Accrued rent	29	26
Accrued taxes	151	188
Accrued performance-related contingent consideration	420	—
Accrued subcontractor services	128	—
Accrued other expenses	178	225
Total accrued expenses	$ 1,854	$ 1,602

9. Long-Term Borrowings

Effective October 15, 2008, the company entered into a one year credit agreement with Silicon Valley Bank ("SVB") incorporating a $4,000,000 revolving line of credit which replaced all existing facilities including the United States term loans. This new line of credit included a $1,500,000 sub-limit for cash management products, letters of credit and foreign currency exchange. Under this agreement, all domestic existing term loans and revolving credit lines were repaid and funded by this new borrowing arrangement. Borrowings under this agreement were collateralized by the company's assets, including intellectual property, and bore interest at the SVB Prime Rate plus 1%. The company was required to maintain 85% of its cash and cash equivalents in operating and investment accounts with SVB and was also required to comply with certain covenant requirements, including a tangible net worth covenant. The amount of borrowings available to the company was the lesser of $4,000,000 or the sum of up to 75% of eligible accounts receivable, as defined by the agreement, and 50% of our cash balance in deposit at SVB, capped at $1,500,000.

At December 31, 2008, the company was not in compliance with the tangible net worth covenant requirement and such condition continued throughout 2009. As such, the company entered into a series of loan modification and forbearance agreements ("agreements") with effective dates ranging from January 31, 2009 through November 17, 2009. In conjunction with these agreements, the terms of its credit facility were revised culminating in a reduction to its revolving line of credit to $1,300,000 with a maturity date of October 15, 2009 and a change in the rates of interest charged throughout 2009 in the range of SVB Prime Rate plus 1.5% to 3.00%. Under this revised credit facility, the company was required to maintain all of its cash and cash equivalents in operating and investment accounts with SVB and SVB's affiliates, and was also required to continue compliance with certain covenant requirements, including the tangible net worth covenant. During the third quarter of 2009, SVB informed the company that it did not intend to renew the company's revolving line of credit when it was set to expire on October 15, 2009. Ultimately, the company was able to extend the maturity date of this credit facility to December 31, 2009 at which time it liquidated the outstanding balance of $253,000 on the line of credit. The company has not replaced this credit facility but is actively pursuing other potential financial resources to replace and/or compensate for the loss of the line of credit.

Borrowings under the revolving line of credit were $1,776,000 at December 31, 2008. The revolving line of credit borrowings were recorded in the company's consolidated balance sheets as a current liability. Available borrowings under this line of credit were $263,000 at December 31, 2008. The interest rate at the time of the liquidation of the credit facility on December 31, 2009 was 7.0% versus 5.0% at December 31, 2008.

On May 27, 2009, the company entered into an unsecured Promissory Note ("Note") with The Quercus Trust ("The Trust") in the amount of $70,000. Under the terms of this Note, we are obligated to pay The Trust the principal sum of the Note and interest accruing at a yearly rate of 1.00% in one lump sum payment on or before June 1, 2109. The company received these funds on June 9, 2009.

On December 29, 2009 and in conjunction with the acquisition of SRC, the company entered into Letter of Credit Agreements ("LOC's") with John Davenport, President of the company, and with The Trust, for $250,000 and $300,000, respectively. These LOC's have a term of 24 months and bear interest at a rate of 12.5% on the face amount. The LOC's are collateralized by a percentage of the capital stock of Crescent Lighting Ltd. ("CLL") which in turn is based on CLL's net worth as of November 30, 2009 and is subordinated to the senior indebtedness of the company and CLL. In addition, subject to approval by shareholders at the next annual meeting, the company will issue five-year, detachable penny warrants ($.01 per share) to purchase the company's common stock at a rate of 0.5 warrants per dollar of the face amount of the LOC.

In conjunction with the acquisition of SRC on December 31, 2009, the company entered into an agreement with the seller, TLC Investments, LLC ("TLC"), whereby a Convertible Promissory Note ("Convertible Note") was issued for the principal amount of $500,000. This Convertible Note bears interest at the Wall Street Journal Prime Rate plus two percent (2%), which along with the principal, is due and payable on June 30, 2013 ("maturity date"). Additionally, TLC has the right to convert the principal of the Convertible Note, in whole, into 500,000 shares of the company's common stock at any time during the period commencing on June 30, 2010 and through the maturity date. Additionally, as a provision to the Convertible Note, if the reported closing price of a share of the company's common stock shall not be equal to or greater than $2.00 for at least twenty (20) trading days between June 30, 2010 and June 30, 2013, the company shall pay TLC and additional fee of $500,000 on the maturity date.

Through the company's United Kingdom subsidiary, the company maintains a British pounds sterling-denominated bank overdraft facility with Lloyds Bank Plc, in the amount of $406,000, based on the exchange rate at December 31, 2009. There were no borrowings against this facility as of December 31, 2009 or December 31, 2008. The facility is renewed annually on January 1. The interest rate on the facility was 2.75% at December 31, 2009, and 7.25% at December 31, 2008.

Through the company's former German subsidiary, which has been classified as discontinued operations in the company's consolidated financial statements; the company maintained a Euro-denominated credit facility under an agreement with Sparkasse Neumarkt Bank. This credit facility was put in place to finance the building of offices in Berching, Germany, which were owned and occupied by the company's German subsidiary. In June, 2009, the company paid, in its entirety, the balance due on the credit facility with proceeds received from the sale of the office building in Berching, Germany. Borrowings against this facility were valued at $299,000 at December 31, 2008 based on the exchange rate at December 31, 2008. The interest rate was 5.49% at December 31, 2008.

In addition, the company's former German subsidiary had a Euro-denominated revolving line of credit with Sparkasse Neumarkt Bank. At December 31, 2008, the company had borrowings against this line of credit were valued at $128,000 based on the exchange rate at December 31, 2008. The interest rate on this line of credit was 11.00% at December 31, 2008.

Future maturities of remaining borrowings are (in thousands):

Year ending December 31,	Long-Term Borrowings
2010	$ —
2011	550
2012	—
2013	500
2014	—
2015 and thereafter	70
Gross long-term borrowings	1,120
Less: discounts on long-term borrowings	(405)
Total commitment, net	$ 715

10. Commitments and Contingencies

The company occupies manufacturing and office facilities under non-cancelable operating leases expiring through 2017 under which it is responsible for related maintenance, taxes, and insurance. Minimum lease commitments under the leases are as follows (in thousands):

Year ending December 31,	Gross Lease Commitments	Sublease Payments	Minimum Lease Commitments
2010	$ 869	$ (36)	$ 833
2011	285	—	285
2012	58	—	58
2013	53	—	53
2014	47	—	47
2015 - 2017	113	—	113
Total commitment	$ 1,425	$ (36)	$ 1,389

These leases included certain escalation clauses; thus, rent expense was recorded on a straight-line basis. Net rent expense for continuing operations was $797,000, $841,000, and $949,000 for the years ended December 31, 2009, 2008, and 2007, respectively. Beginning in 2006, a portion of our Solon facility has been subleased. For 2009, 2008, and 2007, the gross rent for continuing operations was reduced by $71,000, $71,000 and $75,000 of sublease rentals, respectively.

In connection with the acquisition of SRC, the company maintains a performance-related contingent obligation related to the 2.5%, payout based upon the annual revenues of the acquired business over the next 42 months, and a $500,000 fee if the market price of the company's common stock is not equal to or greater than $2.00 per share for at least twenty trading days between June 30, 2010 and June 30, 2013.

11. Shareholders' Equity

Warrants

On December 31, 2009, the company entered into a strategic alliance with Woodstone Energy LLC ("Woodstone"), a commercial and industrial energy services company serving Fortune 50 companies throughout the United States. This strategic alliance creates a path for contracts totaling not less than $15,000,000 to be issued by Woodstone to SRC. In return for this Woodstone commitment, the company issued 600,000 warrants. 400,000 warrants are exercisable by Woodstone upon the written commitment of $10,000,000 in specific secured contracts with the remaining 200,000 warrants being exercisable by Woodstone upon the written commitment of an additional $5,000,000 in specific secured contracts. These warrants will expire on December 31, 2014. The company issued 3,566,440 warrants on March 14, 2008 as part of a private placement equity financing. Those warrants are fully exercisable and will expire on March 14, 2013. There were no warrants issued by the company in 2007. Warrants were issued in 2000 as part of acquisitions, and in 2002 and 2003 as part of stock-based financings. There have been no warrants issued to employees, directors, or consultants for compensation purposes. All warrants, except as noted otherwise, are fully vested and exercisable. The activity relating to previously issued warrants is as follows:

	Warrants Outstanding Commitments	Warrants Outstanding Exercise Price	Warrants Exerciseable	Fair Value of Warrants
Balance, December 31, 2006	396,951	$ 4.30 - 4.50	396,951	$ 1,775
Warrants exercised	(85,478)	$ 0.01 - 5.563	(85,478)	(295)
Warrants cancelled	(40,274)	$ 0.01 - 5.563	(40,274)	(260)
Balance, December 31, 2007	271,199	$ 4.30 - 4.50	271,199	$ 1,220
Warrants issued	3,566,440	$ 3.08	3,566,440	10,985
Balance, December 31, 2008	3,837,639	$ 3.08 - 4.50	3,837,639	$ 12,205
Warrants issued	600,000	$ 0.65	—	—
Balance, December 31, 2009	4,437,639	$ 3.08 - 4.50	3,837,639	$ 12,205

In the company's subscription rights offering that expired on October 30, 2009, an investor inadvertently purchased 1,000,000 shares of our common stock at $0.75 per share. The company agreed to facilitate the sale of these shares to another shareholder or investor or to purchase them directly. After contacting selected shareholders and investors, the company introduced the investor to The Quercus Trust ("The Trust"), the company's largest shareholder. David Gelbaum, a member of the company's Board of Directors at the time of the transaction, and his spouse are co-trustees of The Trust. The company was informed on December 30, 2009, by the investor and The Trust that The Trust had agreed to purchase those shares at $0.80 per share. At that time, the closing market price of a share of our common stock was approximately $0.65 per share.

On March 14, 2008, in a private placement to nineteen investors of 3,184,321 shares of common stock and an equal number of five-year warrants to purchase common stock, The Trust had acquired 1,560,062 warrants. To facilitate the purchase of the 1,000,000 shares discussed above, on December 31, 2009, the company's Board of Directors agreed with The Trust to reduce the exercise price of the warrants issued to The Trust to $0.01 per share upon the execution of the purchase of all 1,000,000 shares to be completed in 2010.

1988 Stock Option Plan

Upon adoption of the 1994 Stock Option Plan (see below), the company's Board of Directors determined to make no further grants under the 1988 Stock Option Plan (the 1988 Plan). Upon cancellation or expiration of any options granted under the 1988 Plan, the related reserved shares of common stock became available instead for options granted under the 1994 Stock Option Plan, and, after May 19, 2004, under our 2004 Stock Incentive Plan.

1994 Directors' Stock Option Plan

At December 31, 2004, a total of 400,000 shares of common stock had been reserved for issuance under the 1994 Directors' Stock Option Plan. The plan provided for the granting of non-statutory stock options to non-employee directors of the company. This plan was terminated on May 19, 2004.

1994 Stock Option Plan

At December 31, 2004, an aggregate of 1,550,000 shares of the company's common stock had been reserved for issuance and were outstanding under the 1994 Stock Option Plan to employees, officers, and consultants at prices not lower than the fair market value of the common stock of the company on the date of grant in the case of incentive stock options and not lower than 85% of the fair market value on the date of grant in the case of non-statutory stock options. Options granted could have been either incentive stock options or non-statutory stock options. The plan administrator (the Board of Directors or a committee of the Board) determined the terms of options granted under the plan, including the number of shares subject to the option, exercise price, term, and exercisability. This plan was terminated on May 19, 2004.

2004 Stock Incentive Plan

On May 19, 2004, the shareholders approved the 2004 Stock Incentive Plan (the "2004 Plan"). The stated purpose of the 2004 Plan is to promote the long-term success of the Company and the creation of stockholder value by (a) encouraging employees, outside directors, and consultants to focus on critical long-range objectives; (b) encouraging the attraction and retention of employees, outside directors, and consultants with exceptional qualifications; and (c) linking employees, outside directors, and consultants directly to stockholder interests through increased stock ownership. The 2004 Plan seeks to achieve this purpose by providing for awards in the form of restricted shares, stock units, options (which may constitute incentive stock options or non-statutory stock options), or stock appreciation rights. An aggregate of 500,000 shares of the company's common stock was reserved for issuance under the 2004 Plan on May 19, 2004. On June 15, 2006, the shareholders reserved an additional 500,000 shares of the company's common stock for issuance under the 2004 Plan.

On May 6, 2008, an individual was granted an incentive stock option under the 2004 Plan to purchase 100,000 shares of our common stock at an exercise price of $2.00 per share. At that time, only 59,000 shares were available for grant under the plan. In order to provide enough shares to cover the grants, the individual was asked to surrender 141,000 shares under an option granted to him on June 28, 2005 at an exercise price of $9.60 per share. This modification of options required the company to recognize additional stock-based compensation of $88,000 over the remaining vesting period of the June 28, 2005 option.

2008 Stock Incentive Plan

On September 30, 2008, the company's shareholders approved its 2008 Incentive Stock Plan. Under the Plan, the maximum aggregate number of stock options awarded shall not exceed 1,000,000 shares, plus any shares remaining available for grant under existing plans. Under existing plans, only a limited number of shares remain available for grant.

Options outstanding under all plans have a contractual life between five and ten years, and vesting periods between one and four years.

Option activity under all plans comprised (in thousands, except per share data):

	Options Available for Grant	Number of Shares Outstanding	Weighted Average Exercise Price Per Share
Balance, December 31, 2006	190	1,293	$ 7.00
Granted	(259)	259	6.30
Cancelled	136	(136)	6.96
Exercised	—	(140)	4.66
Balance, December 31, 2007	67	1,276	$ 7.07
Granted	(477)	477	1.91
Cancelled	238	(238)	8.22
Exercised	—	(23)	3.27
Additional shares reserved	1,000	—	—
Balance, December 31, 2008	828	1,492	$ 5.29
Granted	(1,146)	1,146	0.70
Cancelled	520	(520)	3.35
Exercised	—	(397)	0.66
Balance, December 31, 2009	202	1,721	$ 3.63

At December 31, 2009, options to purchase 923,000 shares of common stock were exercisable at a weighted-average fair value of $2.81 with an intrinsic value of $2,000. At December 31, 2009, options to purchase 1,721,000 shares were outstanding, with a weighted-average fair value of $2.00 with an intrinsic value of $4,000.

At December 31, 2008, options to purchase 771,000 shares of common stock were exercisable at a weighted-average fair value of $2.95. At December 31, 2008, options to purchase 1,492,000 shares were outstanding, with a weighted-average fair value of $2.40. All options exercised during 2008 had no intrinsic value as the market price per share of common stock at the date of exercise was below the per share exercise price. All outstanding options, both exercisable and non-exercisable, have no intrinsic value as the market price per share of common stock of $1.15 at December 31, 2008 was below the per share exercise price of all grants to date.

	OPTIONS OUTSTANDING			OPTIONS CURRENTLY EXERCISABLE		
Range of Exercise Prices	Number of Shares Outstanding	Weighted Average Remaining Contactual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Remaining Contactual Life	Weighted Average Exercise Price
	(in thousands)	*(in years)*		*(in thousands)*	*(in years)*	
$0.60 - $4.80	1,118	8.3	$ 1.63	456	6.7	$ 2.39
$4.91 - $7.19	349	7.1	$ 6.39	227	7.0	$ 6.48
$7.23 - $9.50	187	5.6	$ 7.72	173	5.6	$ 7.75
$10.64 - $12.00	67	5.5	$ 11.33	67	5.5	$ 11.33
	1,721			923		

1994 Employee Stock Purchase Plan

A total of 150,000 shares of common stock had been reserved for issuance under the 1994 Employee Stock Purchase Plan. The plan permits eligible employees to purchase common stock through payroll deductions at a price equal to the lower of 85% of the fair market value of the company's common stock at the beginning or end of the offering period. Employees may end their participation at any time during the offering period, and participation ends automatically on termination of employment with the company. On June 15, 2006, the shareholders reserved an additional 50,000 shares of the company's common stock for issuance under the 1994 Employee Stock Purchase Plan. At December 31, 2009, 2008, and 2007, 114,000 shares, 103,000 shares, and 98,000 shares had been issued under this plan since inception, respectively.

Shareholder Rights Plan

On September 12, 2001, the Board of Directors declared a dividend distribution of one "Right" for each outstanding share of common stock of the company to shareholders of record at the close of business on September 26, 2002. One Right also will attach to each share of common stock issued by the company subsequent to such date and prior to the distribution date defined below. With certain exceptions, each Right, when exercisable, entitles the registered holder to purchase from the company one one-thousandth of a share of a new series of preferred stock, designated as Series A Participating Preferred Stock, at a price of $30.00 per one one-thousandth of a share, subject to adjustment. The Rights were distributed as a non-taxable dividend and expire ten years from the date of the Rights Plan. In general, the Rights will become exercisable and trade independently from the common stock on a distribution date that will occur on the earlier of (i) the public announcement of the acquisition by a person or group of 15% or more of the common stock or (ii) 10 days after commencement of a tender or exchange offer for the common stock that would result in the acquisition of 15% or more of the common stock. Upon the occurrence of certain other events related to changes in ownership of the common stock, each holder of a Right would be entitled to purchase shares of common stock, or an acquiring corporation's common stock, having a market value of twice the exercise price. Under certain conditions, the Rights may be redeemed at $0.001 per Right by the Board of Directors.

The description and terms of the Rights are set forth in a Rights Agreement dated as of September 20, 2002, between the company and Mellon Investor Services LLC, as rights agent. On March 12, 2008, as part of a private placement of shares of common stock and warrants to a number of existing shareholders, with the largest portion being purchased by The Quercus Trust of Costa Mesa, California, the company and Mellon Investor Services LLC amended the agreement to increase the 15% ceiling noted above to 20% for the Trust and persons who are beneficial owners through the Trust, without triggering the rights under the agreement.

12. Income Taxes

The company adopted the provisions of ASC Topic 740, *Accounting for Uncertainty in Income Taxes* on January 1, 2007. ASC Topic 740 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. Guidance also is provided on derecognition, classification, interest and penalties, accounting in interim periods, and disclosure and transition. Based on the company's evaluation, there are no significant uncertain tax positions requiring recognition in the company's financial statements. There was no effect on financial condition or results of operations as a result of implementing ASC Topic 740 to all tax positions for which the statute of limitation remained open, and the company did not have any unrecognized tax benefits. At December 31, 2009, there have been no changes to the liability for uncertain tax positions, and there are no unrecognized tax benefits.

The company files income tax returns in the United States federal jurisdiction, as well as in various states and foreign jurisdictions. With few exceptions, the company is no longer subject to United States federal, state, and local, or non-United States income tax examinations by tax authorities for years before 2006.

The company's policy is to reflect interest expense related to uncertain income tax positions as part of income tax expense, when and if they become applicable.

The components of the benefit from (provision for) income taxes are as follows *(in thousands)*:

	Years ended December 31,		
	2009	2008	2007
Current			
Federal	$ —	$ —	$ —
Foreign	—	—	(13)
State	(3)	(6)	—
	(3)	(6)	(13)
Deferred			
Federal	—	238	(162)
Foreign	(4)	4	—
State	—	14	(15)
	(4)	256	(177)
Benefit from (provision for) income taxes	(7)	250	(190)

The following table shows the geographic components of pretax income (loss) from continuing operations between United States and foreign subsidiaries *(in thousands)*:

	December 31,		
	2009	2008	2007
United States	$ (9,902)	$ (13,039)	$ (10,707)
Foreign subsidiaries	95	116	(90)
Pretax loss from continuing operations	$ (9,807)	$ (12,923)	$ (10,797)

The principal items accounting for the difference between income taxes computed at the United States statutory rate and the benefit from (provision for) income taxes reflected in the statements of operations are as follows:

	Years ended December 31,		
	2009	2008	2007
United States statutory rate	34.0%	34.0%	34.0%
State Taxes (net of federal tax benefit)	—%	—%	1.9%
Valuation allowance	(35.7)%	(31.1)%	(38.2)%
Other	1.6%	(1.2)%	0.6%
	(0.1)%	1.7%	(1.7)%

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets are as follows *(in thousands)*:

	December 31,		
	2009	2008	2007
Allowance for doubtful accounts	$ 75	$ 92	$ 218
Accrued expenses and other reserves	1,936	1,905	1,233
Tax credits, deferred R&D, and other	633	833	202
Net operating loss	19,576	15,807	12,413
Valuation allowance	(22,209)	(18,622)	(14,054)
Total deferred tax asset	11	15	12
Deferred tax liabilities associated with indefinite-lived intangibles	—	—	(252)
Net total deferred taxes	$ 11	$ 15	$ (240)

The company has a full valuation allowance against its United States deferred tax assets. The net deferred tax assets for 2009 amounted to $11,000 and were for the company's United Kingdom subsidiary, which reported income in 2009 and has been profitable prior to 2007. The net deferred liabilities were $0 at December 31, 2009 and at December 31, 2008. There were no Federal tax expenses for the United States operations in 2009, as any expected benefits were offset by an increase in the valuation allowance.

As of December 31, 2009, the company has a net operating loss carry-forward of approximately $54,400,000 for federal, state and local income tax purposes. If not utilized, these carry-forwards will begin to expire in 2020 for federal and has begun to expire for state and local purposes.

13. Segments and Geographic Information

The company has two primary product lines: pool lighting and general commercial lighting, each of which markets and sells lighting systems and customer specific energy-efficient lighting solutions. The company markets its products and solutions for worldwide distribution through a combination of direct sales employees, independent sales representatives, and various distributors in different geographic markets throughout the world.

A summary of geographic sales from continuing operations is as follows *(in thousands)*:

	Years ended December 31,		
	2009	2008	2007
United States Domestic	$ 7,930	$ 12,902	$ 14,949
Other Countries	4,559	7,130	4,812
Net sales	$ 12,489	$ 20,032	$ 19,761

A summary of sales from continuing operations by product line is as follows *(in thousands)*:

	Years ended December 31,		
	2009	2008	2007
Pool Lighting	$ 3,906	$ 7,219	$ 10,976
Commercial Lighting	8,583	12,813	8,785
Net sales	$ 12,489	$ 20,032	$ 19,761

A summary of geographic long-lived assets (fixed assets and goodwill) is as follows *(in thousands)*:

	December 31,	
	2009	2008
United States Domestic	$ 3,556	$ 3,726
Germany	—	540
Other Countries	207	193
Long-lived assets, net	$ 3,763	$ 4,459

14. Employee Retirement Plan

The company maintains a 401(k) profit-sharing plan (the “Plan”) for its employees who meet certain qualifications. The Plan allows eligible employees to defer up to 15% of their earnings, not to exceed the statutory amount per year on a pretax basis, through contributions to the Plan. The Plan provides for employer contributions at the discretion of the Board of Directors; however, no such contributions were made in 2009, 2008, or 2007.

15. Reorganization and Restructuring

On May 8, 2007, Energy Focus, Inc., a wholly owned subsidiary of Fiberstars, Inc., was merged into Fiberstars, Inc. As a result of this merger, the name of Fiberstars, Inc. was changed to Energy Focus, Inc. Existing certificates for shares of the company, bearing the name Fiberstars, Inc., will continue to be valid certificates for Energy Focus, Inc., and no action is required by the shareholders as a result of the name change.

The company recognized restructuring expenses of $125,000 and $456,000 for 2009 and 2007, respectively. For both years, these expenses were associated with relocating our manufacturing equipment and operations. The company incurred no restructuring expense during 2008.

16. Related Party Transactions

The company entered into a consulting agreement with Jeffrey H. Brite, a member of its Board of Directors, on November 1, 2004. This agreement ended on March 7, 2007, upon Jeffrey H. Brite’s resignation as a member of the Board of Directors. As a consultant under this agreement, Mr. Brite assisted the company in various capacities. In return, the company compensated Mr. Brite with the award of an option for the acquisition of up to 40,000 shares of its common stock at a per-share exercise price of $7.23, which was expensed during 2004, and with annual aggregate cash payments of $50,000 paid in quarterly installments during each of the years 2005, 2006, and part of 2007. No expenses were recorded during the twelve months ending December 31, 2009 and December 31, 2008, nor were any payments made to Mr. Brite. Payments for the twelve months ending December 31, 2007, were $13,690.

Gensler Architecture, Design, and Planning, P.C., a New York professional corporation ("Gensler"), provided contract services to the company in the areas of fixture design and marketing, targeted at expanding the market for the company's EFO™ products. Mr. Jeffrey Brite, an employee of Gensler, was a member of the company's Board of Directors through March 7, 2007. The company had entered into a three-year consulting agreement with Gensler, effective December 15, 2004. Gensler agreed to assist the company's marketing group with matters of structure, procedure and practices as they relate to the design, real estate, and procurement communities, and advise the company on strategies to enhance its visibility and image within the design and construction community as a manufacturer of preferred technology. In return, the company compensated Gensler with a one-time cash payment in 2005 of $60,750 and a $50,000 annual cash payment paid in quarterly installments of $12,500 in arrears for each of the calendar years 2005, 2006, and part of 2007. Also, there was a one-time option award for acquiring up to 75,000 shares of the company's common stock at a per-share exercise price of $6.57, which was expensed in 2006 under ASC 718. No payments were made in the fourth quarter of 2007 to Gensler, but the company accrued expenses of $12,500, which were paid during the first quarter of 2008. Payments total $37,500 for the twelve months ending December 31, 2007, compared to $50,000 in 2006.

On February 3, 2006, the company had entered into a consulting agreement with David Ruckert, a member of its Board of Directors. Mr. Ruckert was paid $76,000 during the year ending December 31, 2007 and $110,000 during the year ending December 31, 2006 under this agreement. This agreement was terminated on June 30, 2007. No payments were made to Mr. Ruckert during the twelve months ending December 31, 2009 or 2008. Additionally, Mr. Ruckert was granted options to purchase 32,000 shares of the company's common stock. Stock expense incurred under ASC 718 related to these options was $30,000 for all years ending December 31, 2009, December 31, 2008, and December 31, 2007.

On October 19, 2007, the company entered into a management agreement with Barry Greenwald, former General Manager of its Pool Lighting Division. Under this agreement, the company was to pay Mr. Greenwald nonrefundable amounts totaling $309,000 of additional compensation, of which $77,000 was paid on November 1, 2007, and $77,000 was paid on March 14, 2008. Upon Mr. Greenwald's termination on January 17, 2008, the balance of $155,000 would have been paid in 36 monthly installments commencing on January 1, 2009, subject to certain conditions being met by Mr. Greenwald. Mr. Greenwald failed to meet these certain conditions, so the accrued liability of $155,000 was reversed during the twelve months ending December 31, 2008.

On March 14, 2008, the company received an additional $9,335,000 in equity financing, net of expenses. The investment was made by several then current Energy Focus, Inc. shareholders, including four then current members of the company's Board of Directors. These investors agreed to an at-market purchase of approximately 3.1 million units for $3.205 per unit, based on the closing bid price of the company's common shares on March 13, 2008 of $3.08. Each unit comprises one share of the company's common stock, par value $0.0001 per share, and one warrant to purchase one share of the company's common stock at an exercise price of $3.08 per share. The warrants were immediately separable from the units and immediately exercisable, and will expire five years after the date of their issuance. This additional financing was to be used to fund working capital, pay debt and perform additional research and development. The company received 100% of the funds from escrow on March 17, 2008. Among the investors were Ronald A. Casentini, John M. Davenport, John B. Stuppin, and Philip E. Wolfson, all of whom were members of its Board of Directors at the time of the transaction, and who invested approximately $100,000 in the aggregate. Also among the investors was The Quercus Trust ("The Trust"), whose trustees include David Gelbaum, who became a member of the company's Board of Directors in February, 2009.

On May 27, 2009, the company entered into a Promissory Note ("Note") with The Trust in the amount of $70,000. Please refer to Note 9, Long-Term Borrowings, for discussion of the terms of the Note.

In November, 2009, the company received an additional $3,344,000 in equity financing, net of expenses by selling 4,813,000 shares of common stock in a registered offering. The investment was made by numerous current Energy Focus shareholders, including two then current members of the company's Board of Directors. The investment was made under the company's registration statement for a $3,500,000 common stock subscription rights offering. Under the terms of the rights offering, the company distributed, at no charge to its shareholders, transferable rights to purchase up to $3.5 million of the company's common stock at the established subscription price per share of $0.75, which was set by the company's Board of Directors. At the time the offering began, the company distributed to each shareholder one transferable right for each share of common stock owned by the shareholder. Each right entitled the holder to purchase one share of the company's common stock, par value $0.0001 per share, subject to a maximum of 4,600,000 shares to be issued in the offering. Shareholders were entitled to subscribe for shares not subscribed for by other shareholders. Among the investors were Philip E. Wolfson, a member of the company's Board of Directors at the time of the transaction, and who invested approximately $8,000 in the aggregate. Also among the investors was The Trust, whose trustees include David Gelbaum.

In the company's subscription rights offering discussed above, an investor inadvertently purchased 1,000,000 shares of our common stock at $0.75 per share. The company agreed to facilitate the sale of these shares to another shareholder or investor or to purchase them directly. A purchase of those shares by the company would have severely depleted its cash-on-hand and working capital. After contacting selected shareholders and investors, the company introduced the investor to The Trust, the company's largest shareholder. The company was informed on December 30, 2009, by the investor and The Trust that The Trust had agreed to purchase those shares at $0.80 per share. At that time, the closing market price of a share of our common stock was approximately $0.65 per share. To facilitate the purchase of the 1,000,000 shares by The Trust, on December 30, 2009, the company's Board of Directors agreed with The Trust to reduce the exercise price of the 1,560,062 warrants issued to The Trust in March, 2008 to $0.01 per share upon the execution of the purchase of all 1,000,000 shares to be completed in 2010.

On December 29, 2009 and in conjunction with the acquisition of SRC, the company entered into Letter of Credit Agreements ("LOC's") with John Davenport, President of the company, and with The Trust, for $250,000 and $300,000, respectively. Please refer to Note 9, Long-Term Borrowings, for discussion of the terms of these LOC's.

Rob Wilson, our Vice President of SRC, is a minority owner in TLC Investments, LLC ("TLC"), a Tennessee limited liability company, as well as in Woodstone Energy, LLC ("Woodstone"), a Tennessee limited liability company, both of which are located in Nashville, Tennessee.

In conjunction with the acquisition of SRC by TLC on December 31, 2009, the company entered into an agreement with TLC whereby a Convertible Promissory Note ("Convertible Note") was issued for the principal amount of $500,000. This Convertible Note bears interest at a rate of the Wall Street Journal Prime Rate plus two percent (2%), which along with the principal, is due and payable on June 30, 2013. Additionally, TLC has the right to convert the principal of the Convertible Note, in whole, into 500,000 shares of the company's common stock at any time during the period commencing on June 30, 2010 and ending the maturity date. Additionally, as a provision to the Convertible Note, if the reported closing price of a share of the company's common stock shall not be equal to or greater than $2.00 for at least twenty (20) trading days between June 30, 2010 and June 30, 2013, the company shall pay TLC and additional fee of $500,000 on the maturity date.

On December 31, 2009, the company issued to Woodstone warrants to purchase up to 600,000 shares of the company's common stock at an exercise price of $0.65 per share, and with a term ending on December 31, 2014. The warrants become exercisable only if SRC receives from Woodstone firm contracts or purchase orders for at least $10,000,000 by June 30, 2013. The warrants vest in two tranches: 400,000 shares when contracts or purchase orders between SRC and Woodstone reach $10,000,000 and an additional 200,000 shares when contracts or purchase orders between them SRC and Woodstone reach an additional $5,000,000. The warrants include registration rights for the shares of common stock to be issued upon exercise of the warrants.

17. Legal Matters

On January 29, 2010, a competitor and former supplier filed a complaint against the company in the Court of Chancery of the State of Delaware, alleging that the company has misused proprietary trade secrets, breached a contract, and engaged in deceptive trade practices relating to one of its lighting products. The complaint seeks injunctive relief and damages. The company is currently preparing to answer the complaint, but has not yet done so. The company strongly denies any impropriety, believes that the complaint is without merit, and intends to vigorously defend itself. In its management's opinion, this lawsuit should not have an adverse effect on the company's financial condition, cash flows, or results of operations.

The company is not currently engaged in any other litigation and does not anticipate becoming involved in any in the foreseeable future.

18. Subsequent Events

On March 17, 2010, the company entered into a purchase agreement with Lincoln Park Capital Fund, LLC, an Illinois limited liability company ("LPC"), whereby LPC agreed to purchase 350,000 shares of the company's common stock together with a warrant to purchase an equivalent amount of shares, subject to the registration requirements described below, for total consideration of $375,000. LPC also agreed to purchase up to an additional 3,650,000 shares of common stock, at the company's option as described below.

The company agreed, in a registration rights agreement with LPC, to file a registration statement with the SEC covering the shares issuable under the purchase agreement. After the registration statement has been declared effective, LPC shall purchase 350,000 shares of the company's common stock, together with the warrant to purchase 350,000 shares of common stock, for total consideration of $375,000. The warrant shall have a term of five (5) years, an exercise price of $1.20, and may not be exercised until 6 months after issuance. There are no penalties or liquidated damages associated with the company's registration obligations.

Following the effectiveness of the registration statement, LPC agreed to purchase 3,650,000 shares of the company's common stock, over a 25 month period, as directed by the company. The purchase price of these shares will be based on the market prices of the company's common stock at the time of the sale without any fixed discount. The company may suspend purchases by LPC at any time, and may also, in its sole discretion, accelerate or reduce purchases under certain conditions.

LPC cannot purchase shares of the company's common stock on any business day that the price of the common stock is below $1.00. The common stock purchase agreement may be terminated by the company, at any time, at its discretion without any cost to it. The proceeds to be received by the company under the agreement will be used for working capital and general corporate purposes. LPC has agreed not to engage in any shorting or hedging in any manner whatsoever. Upon entering into the purchase agreement, the company issued to LPC 120,000 shares of its common stock as consideration for entering into the agreement and shall issue an equivalent amount of shares pro rata as LPC purchases the 3,650,000 shares.

On March 30, 2010, the company entered into an agreement with EF Energy Partners LLC, an Ohio limited liability company ("EF Energy"), under which it sold to EF Energy a Secured Subordinated Promissory Note ("Subordinated Note") for the principal amount of $1,150,000. The company secured the full amount of this financing with a pledge of its United States gross accounts receivable and selected capital equipment. This Subordinated Note bears interest at a rate of 12.5%, which is payable quarterly, in arrears, commencing September 30, 2010. The entire outstanding principal balance of this Subordinated Note, together with all accrued interest thereon, is due and payable on March 30, 2013. Additionally, the company issued to the eight investors in EF Energy five-year, detachable penny warrants to purchase shares of the company's common stock at a rate of 0.2 warrants per dollar of financing, or 230,000 warrants, with an expiration date of March 30, 2015. EF Energy and its investors are accredited investors under the United States Securities and Exchange Commission's Regulation D and the issuance of the warrant is exempt from registration under Section 4(2) of the 1933 Securities Act, and the SEC's Regulation D and Rule 506.

Supplementary Financial Information to Item 8

The following table sets forth our selected unaudited financial information for the eight quarters in the period ended December 31, 2009. This information has been prepared on the same basis as the audited financial statements and, in the opinion of management, contains all adjustments necessary for a fair presentation thereof.

Any variations from year to date amounts reported in this report are a result of rounding.

QUARTERLY FINANCIAL DATA (UNAUDITED)
(IN THOUSANDS, EXCEPT PER SHARE DATA)

2009 Quarters Ended	Dec. 31	Sep. 30	Jun. 30	Mar. 31
Net sales from continuing operations	$ 3,618	$ 3,023	$ 3,325	$ 2,523
Net loss from continuing operations	(2,406)	(2,687)	(1,982)	(2,739)
Net income/(loss) from discontinued operations	(602)	69	(366)	(302)
Net loss per share:				
Basic	$ (0.17)	$ (0.17)	$ (0.16)	$ (0.20)
Diluted	$ (0.17)	$ (0.17)	$ (0.16)	$ (0.20)

2008 Quarters Ended	Dec. 31	Sep. 30	Jun. 30	Mar. 31
Net sales from continuing operations	$ 3,506	$ 5,691	$ 6,668	$ 4,167
Net loss from continuing operations	(6,389)	(1,494)	(1,518)	(3,272)
Net income/(loss) from discontinued operations	(1,387)	(90)	(121)	(177)
Net loss per share:				
Basic	$ (0.52)	$ (0.11)	$ (0.11)	$ (0.28)
Diluted	$ (0.52)	$ (0.11)	$ (0.11)	$ (0.28)

Item 9. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

(a) Evaluation of disclosure controls and procedures.

We maintain "disclosure controls and procedures," as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act"), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission 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 timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Our disclosure controls and procedures have been designed to meet, and management believes that they meet, reasonable assurance standards. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. Any design of disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Report on Form 10-K, our Chief Executive Officer and Chief Financial Officer have concluded that, subject to the limitations noted above, our disclosure controls and procedures were effective to ensure that material information relating to us, including our consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which this report on Form 10-K was being prepared.

Management's Report on Internal Controls over Financial Reporting

The management of Energy Focus, Inc. is responsible for establishing and maintaining adequate internal control over financial reporting, as such a term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of internal control over financial reporting based upon criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control—Integrated Framework (COSO framework).

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error and circumvention or overriding of controls; therefore, it can provide only reasonable assurance with respect to reliable financial reporting. Furthermore, effectiveness of an internal control system in future periods cannot be guaranteed, because the design of any system of internal controls is based in part upon assumptions about the likelihood of future events. There can be no assurance that any control design will succeed in achieving its stated goals under all potential future conditions. Over time, certain controls may become inadequate because of changes in business conditions, or the degree of compliance with policies and procedures may deteriorate. As such, misstatements due to error or fraud may occur and not be detected.

Based upon our evaluation under the COSO framework, management concluded that internal control over financial reporting was effective as of December 31, 2009.

Attestation Report of Independent Registered Public Accounting Firm

This annual report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by our independent public accounting firm pursuant to the rules of the SEC that permit us to provide only management's report in this annual report.

Item 9B. Other Information

In November, 2009, the company received an additional $3,344,000 in equity financing, net of expenses by selling 4,813,000 shares of common stock in a registered offering. The investment was made by numerous current Energy Focus shareholders, including two then current members of the company's Board of Directors. The investment was made under the company's registration statement for a $3,500,000 common stock subscription rights offering. Under the terms of the rights offering, the company distributed, at no charge to its shareholders, transferable rights to purchase up to $3.5 million of the company's common stock at the established subscription price per share of $0.75, which was set by the company's Board of Directors. At the time the offering began, the company distributed to each shareholder one transferable right for each share of common stock owned by the shareholder. Each right entitled the holder to purchase one share of the company's common stock, par value $0.0001 per share, subject to a maximum of 4,600,000 shares to be issued in the offering. Shareholders were entitled to subscribe for shares not subscribed for by other shareholders. Among the investors were Philip E. Wolfson, a member of the company's Board of Directors at the time of the transaction, and who invested approximately $8,000 in the aggregate. Also among the investors was The Trust, whose trustees include David Gelbaum.

On March 14, 2008, the company received an additional $9,335,000 in equity financing, net of expenses. The investment was made by several current Energy Focus shareholders, including four members of the Board of Directors. These investors agreed to an at-market purchase of approximately 3.1 million units for $3.205 per unit, based on the closing bid price of Energy Focus common shares on March 13, 2008 of $3.08. Each unit comprises one share of the company's common stock, par value $0.0001 per share, and one warrant to purchase one share of the Company's common stock at an exercise price of $3.08 per share. The warrants were immediately separable from the units and immediately exercisable, and will expire five years after the date of their issuance. This additional financing is being used to fund working capital, pay debt and perform additional research and development. The company received 100% of the funds from escrow on March 17, 2008. Among the investors were Ronald A. Casentini, John M. Davenport, John B. Stuppin, and Philip Wolfson, all of whom were members of its Board of Directors, at the time of the transaction, and who invested approximately $100,000 in the aggregate.

PART III

Item 10. Directors, Executive Officers, and Corporate Governance

Directors

The information regarding our directors is set forth under the caption entitled “Election of Directors” in our Proxy Statement for our 2010 Annual Meeting of Stockholders and is incorporated by reference.

There were no material changes to the procedures by which security holders may recommend nominees to our Board of Directors during 2009.

Executive Officers

The information regarding our executive officers is set forth under the caption entitled “Executive Officers of the Registrant” following Item 4, in Part I, of this report and is incorporated by reference.

Section 16(a) Beneficial Ownership Reporting Compliance

The information regarding compliance with Section 16 of the Securities Exchange Act of 1934 is set forth under the caption entitled “Section 16(a) Beneficial Ownership Reporting Compliance” in our Proxy Statement and is incorporated by reference.

Audit Committee

The information regarding the Audit Committee of our Board of Directors and the information regarding “Audit Committee Financial Experts” are set forth under the caption entitled “Committees of the Board” in our Proxy Statement and is incorporated by reference.

Code of Ethics

We have adopted a Code of Ethics and Business Conduct, which applies to all of our directors, officers, and employees. Our Code of Ethics and Business Conduct is on our website at http://www.efoi.com. Any person may receive a copy without charge by writing to us at Energy Focus, Inc., 32000 Aurora Road, Solon, Ohio 44139, Attention: Secretary.

We intend to disclose on our website any amendment to, or waiver from, a provision of our Code of Ethics and Business Conduct that applies to our directors and executive officers, including our principal executive officer, principal financial officer, principal accounting officer or controller, or any persons performing similar functions, and that is required to be publicly disclosed pursuant to the rules of the Securities and Exchange Commission.

Item 11. Executive Compensation

The information required by this item is incorporated by reference herein from the information provided in the section captioned **“Executive Compensation and Other Information”** in our Proxy Statement.

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

The information about security ownership of certain beneficial owners and management and related stockholder matters required by this item is incorporated by reference herein from the information provided in the sections captioned “**Security Ownership of Principal Shareholders and Management”** and “**Equity Compensation Plan Information**” in our Proxy Statement.

The information regarding securities authorized for issuance under our equity compensation plans required by this item is incorporated by reference herein from the information provided in the section captioned “**Equity Compensation Plan Information”** in our Proxy Statement.

Item 13. Certain Relationships and Related Transactions and Director Independence

The information regarding certain relationships and related transactions and director independence required by this item is incorporated herein by reference to the information in our Proxy Statement under the caption “**Certain Transactions”** and **“Director Independence.”**

Item 14. Principal Accountant Fees and Services

The information regarding principal accountant fees and services and the pre-approval policies and procedures required by this item is incorporated herein by reference from the information contained in our Proxy Statement under the captions **"Ratification of Appointment of Independent Registered Public Accountants—Principal Accountant Fees and Services"** and **"Pre-Approval Policies and Procedures."**

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) (1) **Financial Statements**

The financial statements required by this Item 15(a)(1) are set forth in Item 8.

(2) **Financial Statements Schedules**

Schedule II—Valuation and Qualifying Accounts is set forth below. All other schedules are omitted either because they are not applicable or the required information is shown in the financial statements or the notes.

SCHEDULE II
ENERGY FOCUS, INC.
SCHEDULE OF VALUATION AND QUALIFYING ACCOUNTS
(amounts in thousands)

Description	Balance at Beginning of Year	Charges to Revenue/ Expenses	Deductions	Balance at End of Year
Year ended December 31, 2009				
Allowance for doubtful accounts and returns	$ 486	$ 73	$ 164	$ 395
Valuation allowance for deferred tax assets	18,622	3,587	—	22,209
Year ended December 31, 2008				
Allowance for doubtful accounts and returns	848	245	607	486
Valuation allowance for deferred tax assets	14,054	4,568	—	18,622
Year ended December 31, 2007				
Allowance for doubtful accounts and returns	600	338	90	848
Valuation allowance for deferred tax assets	9,680	4,374	—	14,054

(3) **Exhibits**

Exhibit Number	Description of Documents
2.1	Agreement and Plan of Merger between Fiberstars, Inc., a California corporation, and Fiberstars, Inc., a Delaware corporation (incorporated by reference to Appendix C to the Registrant's Definitive Proxy Statement filed on May 1, 2006).
3.1	Certificate of Incorporation of the Registrant (incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement filed on May 1, 2006).
3.2	Certificate of Designation of Series A Participating Preferred Stock of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on November 27, 2006).
3.3	Bylaws of the Registrant (incorporated by reference to Appendix C to the Registrant's Current Report on Form 8-K filed on November 27, 2006).
3.4	Certificate of Ownership and Merger, Merging Energy Focus, Inc., a Delaware corporation, into Fiberstars, Inc., a Delaware corporation (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed on May 10, 2007).
4.1	Form of Warrant for the purchase of shares of common stock (incorporated by reference to Exhibit 99.3 to the Registrant's Current Report on Form 8-K filed on June 19, 2003).
4.2	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on November 27, 2006)
4.3	Rights Agreement dated as of October 25, 2006 between the Registrant and Mellon Investor Services, LLC, as rights agent (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on November 27, 2006).
4.4	Form of Warrant for the purchase of shares of common stock (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on November 27, 2006).
4.5	Form of Warrant for the purchase of shares of common stock (incorporated by reference to Exhibit 1.2 to the Registrant's Current Report on Form 8-K filed on March 19, 2008).
4.6	Amendment No. 1 to Rights Agreement between the Registrant and Mellon Investment Services, LLC, as Rights Agent, dated as of March 12, 2008 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on March 19, 2009).
4.7	Amendment No. 2 to the Rights Agreement between the Registrant and Mellon Investment Services, LLC, as Rights Agent, dated as of December 31, 2009.
4.8	Common Stock Purchase Warrant No. 2009SRCW-01 for the purchase of 600,000 shares of common stock dated December 31, 2009 in the name of Woodstone Energy, LLC.
4.9	Form of Common Stock Purchase Warrant for the purchase of shares of common stock dated as of December 29, 2009.
4.10	Form of Common Stock Purchase Warrant No. 2010LPCW-01 for the purchase of 350,000 shares of common stock (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on March 19, 2010).
4.11	Form of Common Stock Purchase Warrant for the purchase of shares of common stock dated as of March 30, 2010.
10.1†	1994 Employee Stock Purchase Plan, amended as of December 7, 2000 (incorporated by reference to Exhibit 99.3 to the Registrant's Registration Statement on Form S-8 (Commission File No. 333-52042) filed on December 18, 2000).
10.2	Form of Agreement between the Registrant and independent sales representatives (incorporated by reference to Exhibit 10.20 to the Registrant's Registration Statement on Form SB-2 (Commission File No. 33-79116-LA)).
10.3*	Distribution Agreement dated March 21, 1995 between the Registrant and Mitsubishi International Corporation (incorporated by reference to Exhibit 10.18 to the Registrant's Annual Report on Form 10-KSB for the year ended December 31, 1994).
10.4*	Three -Year Supply Agreement dated November 30, 2000 between the Registrant and Mitsubishi International Corporation (incorporated by reference to Exhibit 10.30 to the Registrant's Annual Report on Form 10-K405 filed on April 2, 2001).
10.5	Securities Purchase Agreement dated June 17, 2003 among the Registrant and the investors named therein (incorporated by reference to Exhibit 99.2 to the Registrant's Current Report on Form 8-K filed on June 19, 2003).
10.6†	Form of Indemnification Agreement for officers of the Registrant (incorporated by reference to Exhibit 10.42 to the Registrant's Annual Report on Form 10-K filed on March 30, 2004).
10.7	Form of Indemnification Agreement for directors of the Registrant (incorporated by reference to Exhibit 10.44 to the Registrant's Annual Report on Form 10-K filed on March 30, 2004).
10.8	Production Share Agreement dated October 9, 2003 among the Registrant, North American Production Sharing, Inc., and Industrias Unidas de B.C., S.A. de C.V. (incorporated by reference to Exhibit 10.45 to the Registrant's Annual Report on Form 10-K filed on March 30, 2004).

10.9† Consulting Agreement effective as of December 15, 2004 between the Registrant and Gensler Architecture, Design, and Planning, P.C. (incorporated by reference to Exhibit 10.28 to the Registrant's Annual Report on Form 10-K filed on March 31, 2006).

Exhibit Number	Description of Documents
10.10†	Consulting Agreement effective as of December 15, 2004 between the Registrant and Jeffrey H. Brite (incorporated by reference to Exhibit 10.29 to the Registrant's Annual Report on Form 10-K filed on March 31, 2006).
10.11	Loan and Security Agreement between Silicon Valley Bank and the Registrant dated August 15, 2005 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on August 18, 2005).
10.12†	Employment Agreement between the Registrant and John M. Davenport dated July 1, 2005 (incorporated by reference from Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.13†	Severance Agreement between the Registrant and David N. Ruckert dated September 16, 2005 (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.14*	Fiberstars Development Agreement between the Registrant and Advanced Lighting Technologies, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005)
10.15*	ADLT Development Agreement between the Registrant and Advanced Lighting Technologies, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.16*	Equipment Purchase and Supply Agreement between the Registrant and Deposition Sciences, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.6 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.17	Cross-License Agreement between the Registrant and Advanced Lighting Technologies, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.7 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.18	Master Services Agreement between the Registrant and Advanced Lighting Technologies, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.8 to the Registrant's Quarterly Report on Form 10-Qfiled on November 14, 2005).
10.19	First Amendment to Production Share Agreement, effective as of August 17, 2005, among the Registrant, North American Production Sharing, Inc., and Industrias Unidas de B.C., S.A. de C.V. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on October 25, 2005).
10.20	Sublease between Venture Lighting International, Inc. and the Registrant dated as of November 11, 2005 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on November 17, 2005).
10.21	Amended and Restated Loan and Security Agreement between the Registrant and Silicon Valley Bank dated December 30, 2005 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on January 6, 2006).
10.22†	Consulting Agreement between the Registrant and David N. Ruckert dated as of February 3, 2006 (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on May 15, 2006).
10.23*	Equipment Purchase and Product Supply Agreement entered into as of May 25, 2006 between the Registrant and Deposition Sciences, Inc. (incorporated by reference to Exhibit 10.1 to Amendment No. 2 to the Registrant's Quarterly Report on Form 10-Q filed on March 6, 2009).
10.24	Modification to Sublease between the Registrant and Keystone Ruby, LLC. (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed on August 11, 2006).
10.25	Amendment No. 1 to Amended and Restated Loan and Security Agreement between the Registrant and Silicon Valley Bank dated September 25, 2006 (incorporated by reference from Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2006).
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10.28	Amendment No. 4 to Amended and Restated Loan and Security Agreement between Silicon Valley Bank and the Registrant dated as of October 1, 2007 (incorporated by reference to Exhibit 10.39 to the Registrant's Annual Report on Form 10-K filed on March 17, 2008).
10.29	Amendment No. 5 to Amended and Restated Loan and Security Agreement between Silicon Valley Bank and Registrant dated as of January 29, 2008 (incorporated by reference to Exhibit 10.39 to the Registrant's Annual Report on Form 10-K filed on March 17, 2008).
10.30†	Management Agreement between Barry R. Greenwald and the Registrant dated as of October 19, 2007 (incorporated by reference to Exhibit 10.39 to the Registrant's Annual Report on Form 10-K filed on March 17, 2008).
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10.33† 1994 Stock Option Plan, amended as of May 24, 2000 (incorporated by reference to Exhibit 99.1 to the Registrant's Registration Statement on Form S-8 (Commission File No. 333-52042) filed on December 18, 2000).

10.34† 1994 Director's Stock Option Plan, amended as of May 12, 1999 (incorporated by reference to Exhibit 99.2 to the Registrant's Registration Statement on Form S-8 (Commission File No. 333-52042) filed on December 18, 2000).

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31.2	Rule 13a-14(a) Certification by Chief Financial Officer (filed with this Report).
32.1	Section 1350 Certification of Chief Executive Officer (filed with this Report).
32.2	Section 1350 Certification of Chief Financial Officer (filed with this Report).

* Confidential treatment has been granted with respect to certain portions of this agreement.

† Management contract or compensatory plan or arrangement.

SIGNATURES

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

ENERGY FOCUS, INC.

Date: March 31, 2010

By: /s/ JOSEPH G. KAVESKI
Joseph G. Kaveski
Chief Executive Officer

In accordance with the Securities Exchange Act of 1934, this Report has been signed by the following persons on behalf of the Registrant and in the capacities indicated on March 31, 2010.

Signature	Title
/s/ JOSEPH G. KAVESKI Joseph G. Kaveski	Chief Executive Officer and Director *(Principal Executive Officer)*
/s/ JOHN M. DAVENPORT John M. Davenport	President and Director
/s/ NICHOLAS G. BERCHTOLD Nicholas G. Berchtold	Vice President of Finance and Chief Financial Officer *(Principal Financial and Accounting Officer*)
*/s/ R. LOUIS SCHNEEBERGER R. Louis Schneeberger	Director
*/s/ J. JAMES FINNERTY J. James Finnerty	Director
*/s/ MICHAEL A. KASPER Michael A. Kasper	Director
*/s/ PAUL VON PAUMGARTTEN Paul Von Paumgartten	Director
*/s/ PHILIP E. WOLFSON Philip E. Wolfson	Director
*/s/ DAVID N. RUCKERT David N. Ruckert	Director
*/s/ DAVID ANTHONY David Anthony	Director

* The undersigned, by signing his name, signs this Report on March 31, 2010 on behalf of the above officers and directors pursuant to a Power of Attorney executed by them and filed as an exhibit to this Report.

By: /s/ JOSEPH G. KAVESKI
Joseph G. Kaveski, Attorney-in-Fact.

EXHIBIT INDEX

Exhibit Number	Description of Documents
2.1	Agreement and Plan of Merger between Fiberstars, Inc., a California corporation, and Fiberstars, Inc., a Delaware corporation (incorporated by reference to Appendix C to the Registrant's Definitive Proxy Statement filed on May 1, 2006).
3.1	Certificate of Incorporation of the Registrant (incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement filed on May 1, 2006).
3.2	Certificate of Designation of Series A Participating Preferred Stock of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on November 27, 2006).
3.3	Bylaws of the Registrant (incorporated by reference to Appendix C to the Registrant's Current Report on Form 8-K filed on November 27, 2006).
3.4	Certificate of Ownership and Merger, Merging Energy Focus, Inc., a Delaware corporation, into Fiberstars, Inc., a Delaware corporation (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed on May 10, 2007).
4.1	Form of Warrant for the purchase of shares of common stock (incorporated by reference to Exhibit 99.3 to the Registrant's Current Report on Form 8-K filed on June 19, 2003).
4.2	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on November 27, 2006)
4.3	Rights Agreement dated as of October 25, 2006 between the Registrant and Mellon Investor Services, LLC, as rights agent (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on November 27, 2006).
4.4	Form of Warrant for the purchase of shares of common stock (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed on November 27, 2006).
4.5	Form of Warrant for the purchase of shares of common stock (incorporated by reference to Exhibit 1.2 to the Registrant's Current Report on Form 8-K filed on March 19, 2008).
4.6	Amendment No. 1 to Rights Agreement between the Registrant and Mellon Investment Services, LLC, as Rights Agent, dated as of March 12, 2008 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on March 19, 2009).
4.7	Amendment No. 2 to the Rights Agreement between the Registrant and Mellon Investment Services, LLC, as Rights Agent, dated as of December 31, 2009.
4.8	Common Stock Purchase Warrant No. 2009SRCW-01 for the purchase of 600,000 shares of common stock dated December 31, 2009 in the name of Woodstone Energy, LLC.
4.9	Form of Common Stock Purchase Warrant for the purchase of shares of common stock dated as of December 29, 2009.
4.10	Form of Common Stock Purchase Warrant No. 2010LPCW-01 for the purchase of 350,000 shares of common stock (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on March 19, 2010).
4.11	Form of Common Stock Purchase Warrant for the purchase of shares of common stock dated as of March 30, 2010.
10.1†	1994 Employee Stock Purchase Plan, amended as of December 7, 2000 (incorporated by reference to Exhibit 99.3 to the Registrant's Registration Statement on Form S-8 (Commission File No. 333-52042) filed on December 18, 2000).
10.2	Form of Agreement between the Registrant and independent sales representatives (incorporated by reference to Exhibit 10.20 to the Registrant's Registration Statement on Form SB-2 (Commission File No. 33-79116-LA)).
10.3*	Distribution Agreement dated March 21, 1995 between the Registrant and Mitsubishi International Corporation (incorporated by reference to Exhibit 10.18 to the Registrant's Annual Report on Form 10-KSB for the year ended December 31, 1994).
10.4*	Three -Year Supply Agreement dated November 30, 2000 between the Registrant and Mitsubishi International Corporation (incorporated by reference to Exhibit 10.30 to the Registrant's Annual Report on Form 10-K405 filed on April 2, 2001).
10.5	Securities Purchase Agreement dated June 17, 2003 among the Registrant and the investors named therein (incorporated by reference to Exhibit 99.2 to the Registrant's Current Report on Form 8-K filed on June 19, 2003).
10.6†	Form of Indemnification Agreement for officers of the Registrant (incorporated by reference to Exhibit 10.42 to the Registrant's Annual Report on Form 10-K filed on March 30, 2004).
10.7	Form of Indemnification Agreement for directors of the Registrant (incorporated by reference to Exhibit 10.44 to the Registrant's Annual Report on Form 10-K filed on March 30, 2004).

10.8	Production Share Agreement dated October 9, 2003 among the Registrant, North American Production Sharing, Inc., and Industrias Unidas de B.C., S.A. de C.V. (incorporated by reference to Exhibit 10.45 to the Registrant's Annual Report on Form 10-K filed on March 30, 2004).
10.9†	Consulting Agreement effective as of December 15, 2004 between the Registrant and Gensler Architecture, Design, and Planning, P.C. (incorporated by reference to Exhibit 10.28 to the Registrant's Annual Report on Form 10-K filed on March 31, 2006).

Exhibit Number	Description of Documents
10.10†	Consulting Agreement effective as of December 15, 2004 between the Registrant and Jeffrey H. Brite (incorporated by reference to Exhibit 10.29 to the Registrant's Annual Report on Form 10-K filed on March 31, 2006).
10.11	Loan and Security Agreement between Silicon Valley Bank and the Registrant dated August 15, 2005 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on August 18, 2005).
10.12†	Employment Agreement between the Registrant and John M. Davenport dated July 1, 2005 (incorporated by reference from Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.13†	Severance Agreement between the Registrant and David N. Ruckert dated September 16, 2005 (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.14*	Fiberstars Development Agreement between the Registrant and Advanced Lighting Technologies, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.4 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005)
10.15*	ADLT Development Agreement between the Registrant and Advanced Lighting Technologies, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.5 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.16*	Equipment Purchase and Supply Agreement between the Registrant and Deposition Sciences, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.6 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.17	Cross-License Agreement between the Registrant and Advanced Lighting Technologies, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.7 to the Registrant's Quarterly Report on Form 10-Q filed on November 14, 2005).
10.18	Master Services Agreement between the Registrant and Advanced Lighting Technologies, Inc. dated September 19, 2005 (incorporated by reference to Exhibit 10.8 to the Registrant's Quarterly Report on Form 10-Qfiled on November 14, 2005).
10.19	First Amendment to Production Share Agreement, effective as of August 17, 2005, among the Registrant, North American Production Sharing, Inc., and Industrias Unidas de B.C., S.A. de C.V. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on October 25, 2005).
10.20	Sublease between Venture Lighting International, Inc. and the Registrant dated as of November 11, 2005 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on November 17, 2005).
10.21	Amended and Restated Loan and Security Agreement between the Registrant and Silicon Valley Bank dated December 30, 2005 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on January 6, 2006).
10.22†	Consulting Agreement between the Registrant and David N. Ruckert dated as of February 3, 2006 (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on May 15, 2006).
10.23*	Equipment Purchase and Product Supply Agreement entered into as of May 25, 2006 between the Registrant and Deposition Sciences, Inc. (incorporated by reference to Exhibit 10.1 to Amendment No. 2 to the Registrant's Quarterly Report on Form 10-Q filed on March 6, 2009).
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* Confidential treatment has been granted with respect to certain portions of this agreement.

† Management contract or compensatory plan or arrangement.

AMENDMENT NO. 2 TO RIGHTS AGREEMENT

This Second Amendment (this "Amendment") to that certain Rights Agreement dated as of October 25, 2006 between the parties, as amended by a First Amendment as of March 13, 2008 (the "Rights Agreement"), is entered into as of December 31, 2009 between Energy Focus, Inc., a Delaware corporation (the "Company"), and Mellon Investor Services LLC, a New Jersey limited liability company (the "Rights Agent"). Capitalized terms used but not defined in this Amendment have the meanings given to them in the Rights Agreement.

WHEREAS, Section 27 of the Rights Agreement provides that, prior to the Distribution Date, the Company and the Rights Agent may from time to time supplement or amend the Rights Agreement without the approval of any holders of Rights or Rights Certificates in order to change or supplement any provision of the Agreement in a manner which the Company may deem necessary or desirable;

WHEREAS, on the date of this Amendment, the Distribution Date has not occurred;

WHEREAS, the Company hereby certifies to the Rights Agent that this Amendment is in compliance with Section 27 of the Rights Agreement; and

WHEREAS, the Board of Directors of the Company, pursuant to Section 27 of the Rights Agreement, has resolved to amend the Rights Agreement to allow The Quercus Trust, and Persons who are Beneficial Owners through the Trust, to have a beneficial ownership percentage of up to thirty percent (30%);

NOW THEREFORE, in consideration of the mutual agreement below, the parties agree as follows.

1. Amendments. The Rights Agreement is amended as follows:

1.1. Section 1(a) is amended and restated in its entirety to read as follows:

"(a) "Acquiring Person" shall mean any Person (as such term is hereinafter defined) who or which, together with all Affiliates (as such term is hereinafter defined) and Associates (as such term is hereinafter defined) of such Person, shall be the Beneficial Owner (as such term is hereinafter defined) of fifteen percent (15%) (except that such percentage shall be thirty percent (30%) for The Quercus Trust and Persons who or which are Beneficial Owners through the Trust (Quercus, together with such Persons, the "Quercus Owners")) or more of the shares of Common Stock then outstanding or who was such a Beneficial Owner at any time on or after the date hereof, whether or not such Person continues to be the Beneficial Owner of fifteen percent (15%) (or in the case of the Quercus Owners, thirty percent (30%)) or more of the outstanding shares of Common Stock. Notwithstanding the foregoing:

(i) in no event shall a Person who or which, together with all Affiliates and Associates of such Person, is the Beneficial Owner of less than fifteen percent

(15%) (or in the case of the Quercus Owners, thirty percent (30%)) of the outstanding shares of Common Stock become an Acquiring Person solely as a result of a reduction of the number of shares of outstanding Common Stock, including repurchases of outstanding shares of Common Stock by the Company, which reduction increases the percentage of outstanding shares of Common Stock Beneficially Owned (as such term is hereinafter defined) by such Person; provided, however, that any subsequent increase in the amount of Common Stock Beneficially Owned by such Person, together with all Affiliates and Associates of such Person, without the prior written approval of the Board shall cause such Person to be an Acquiring Person (unless, measured at such time, such Person would not be an Acquiring Person);

(ii) the term Acquiring Person shall not mean: (A) the Company; (B) any Subsidiary(as such term is hereinafter defined) of the Company; (C) any employee benefit plan of the Company or any of its Subsidiaries; (D) any entity holding securities of the Company organized, appointed or established by the Company or any of its Subsidiaries for or pursuant to the terms of any such plan; or (E) any underwriter acting in good faith in a firm commitment underwriting of an offering of the Company's securities pursuant to arrangements with the Company that have been approved by the Board (however, the exception provided by this clause (E) shall no longer be available in the event that any such underwriter is otherwise an Acquiring Person on or after the date which is forty (40) days after the date of initial acquisition of the Company's securities by such underwriter in connection with such offering); and

(iii) no Person shall be deemed to be an Acquiring Person if: (A)(1) any Schedule 13D under the Exchange Act (as hereinafter defined), or any comparable or successor report, filed (or required to be filed) by such Person does not (or would not) state any intention to or reserve the right to control or influence the management or policies of the Company or engage in any of the actions specified in Item 4 (or any comparable or successor Item) of such Schedule 13D (other than the disposition of Common Stock), (2) either (x) within two (2) Business Days of being requested by the Company to advise the Company regarding the same, such Person certifies in writing to the Company that such Person acquired Beneficial Ownership of fifteen percent (15%) (or in the case of the Quercus Owners, thirty percent (30%)) or more of the outstanding shares of Common Stock inadvertently or without knowledge of the terms of the Rights, or (y) the Board determines in good faith that such Person has become an Acquiring Person inadvertently, (3) such Person divests as promptly as practicable (as determined in good faith by the Board) a sufficient number of securities so that such Person would not be deemed to be an Acquiring Person pursuant to the first sentence of this Section 1(a), (or such other provisions of this Section 1(a) as may be applicable) and (4) promptly following such Person's divestiture of such securities, such Person certifies to the Board that such Person would no longer be deemed an Acquiring Person as defined pursuant to the first sentence of this Section 1(a) (or such other provisions of this Section 1(a) as may be applicable); or (B) by reason of such Person's Beneficial Ownership of fifteen percent

(15%) (or in the case of the Quercus Owners, thirty percent (30%)) or more of the outstanding shares of Common Stock on the date hereof if prior to the Record Date such Person notifies the Board that such Person is no longer the Beneficial Owner of fifteen percent (15%) (or in the case of the Quercus Owners, thirty percent (30%)) or more of the then outstanding shares of Common Stock."

1.2. The second full paragraph of Exhibit C, entitled "Summary of Rights", is amended and restated in its entirety to read as follows:

"Initially, the Rights will be attached to all Common Stock certificates representing shares then outstanding, and no separate Rights certificates will be distributed. The Rights will separate from the Common Stock and a "Distribution Date" will occur upon the earliest of the following: (i) a public announcement that a person, entity or group of affiliated or associated persons and/or entities (an "Acquiring Person") has acquired, or obtained the right to acquire, beneficial ownership of fifteen percent (15%) (or, in the case of the Quercus Owners, thirty percent (30%)) or more of the outstanding shares of Common Stock (other than (A) as a result of repurchases of stock by the Company or certain inadvertent actions by institutional or certain other shareholders, (B) the Company, any subsidiary of the Company or any employee benefit plan of the Company or any subsidiary, and (C) certain other instances set forth in the Rights Agreement); or (ii) ten (10) business days (unless such date is extended by the Board of Directors) following the commencement of a tender offer or exchange offer which would result in any person, entity or group of affiliated or associated persons and/or entities becoming an Acquiring Person (unless such tender offer or exchange offer is a Permitted Offer (defined below))."

2. Miscellaneous.

2.1. No Further Amendments. Except as specifically amended by this Second Amendment, the Rights Agreement shall remain unmodified and in full force and effect, and the Rights Agreement is hereby ratified and affirmed in all respects.

2.2. Governing Law. This Second Amendment shall be governed by and construed in accordance with the State of Delaware; provided, however, that all provisions regarding the rights, duties and obligations of the Rights Agent shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

2.3. Counterparts. This Second Amendment may be executed in any number of counterparts and each of those counterparts shall for all purposes be deemed to be an original, and all of those counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first written above.

ENERGY FOCUS, INC

By: /s/ Joseph G. Kaveski
Joseph G. Kaveski
Chief Executive Officer

MELLON INVESTOR SERVICES LLC

By: /s/ Sandra L. Moore
Sandra L. Moore
Vice President

THIS COMMON STOCK PURCHASE WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED IN VIOLATION OF SUCH ACT, THE RULES AND REGULATIONS THEREUNDER OR THE PROVISIONS OF THIS COMMON STOCK PURCHASE WARRANT.

Number of Shares of Common Stock: 600,000

Warrant No. 2009SRCW-01

COMMON STOCK PURCHASE WARRANT

To Purchase Common Stock of
ENERGY FOCUS, INC.

THIS IS TO CERTIFY THAT Woodstone Energy, LLC, a Tennessee limited liability company, or registered assign (the "Holder"), is entitled, at any time from six (6) months following the Issuance Date (as hereinafter defined) (June 30, 2010) to the Expiration Date (as hereinafter defined) to purchase from Energy Focus, Inc., a Delaware corporation (the "**Company**"), six hundred thousand (600,000) shares of Common Stock (as hereinafter defined and subject to adjustment as provided herein), in whole or in part, including fractional parts, at a purchase price of equal to $0.65 (subject to adjustment as provided herein, the "**Exercise Price**"), all on the terms and conditions and pursuant to the provisions hereinafter set forth.

This Warrant is issued pursuant to, and the Holder is entitled to the benefits of, that certain Warrant Acquisition Agreement dated as of December 31, 2009 by and between the Company and the investor party thereto (the "**Securities Purchase Agreement**"). Capitalized terms used herein without definition are used with the definitions assigned thereto in such Securities Purchase Agreement.

1. DEFINITIONS

As used in this Common Stock Purchase Warrant (this "**Warrant**"), the following terms shall have the respective meanings set forth below:

"**Business Day**" shall mean any day that is not a Saturday or Sunday or a day on which banks in New York City, New York are required or permitted to be closed in the City of New York.

"**Issuance Date**" shall mean December 31, 2009.

"**Commission**" shall mean the Securities and Exchange Commission or any other federal agency then administering the Securities Act and other federal securities laws.

"**Common Stock**" shall mean (except where the context otherwise indicates) the Common Stock, par value $0.0001 per share, of the Company as constituted on the Issuance Date, and any capital stock into which such Common Stock may thereafter be changed, and shall

also include (i) capital stock of the Company of any other class (regardless of how denominated) issued to the holders of shares of Common Stock upon any reclassification thereof which is also not preferred as to dividends or assets over any other class of stock of the Company and which is not subject to redemption and (ii) shares of common stock of any successor or acquiring Company received by or distributed to the holders of Common Stock of the Company in the circumstances contemplated by Section 4.5.

"**Convertible Securities**" shall mean options, evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable, with or without payment of additional consideration in cash or property, for shares of Common Stock, either immediately or upon the occurrence of a specified date or a specified event.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

"**Exercise Period**" shall mean the period during which this Warrant is exercisable pursuant to Section 2.1.

"**Expiration Date**" shall mean the fifth anniversary hereof.

"**Fundamental Corporate Change**" shall have the meaning set forth in Section 4.5.

"**Holder**" shall mean the Person in whose name the Warrant or Warrant Shares set forth herein is registered on the books of the Company maintained for such purpose.

"**Market Price**" shall mean, on any date of determination, (i) the closing price of a share of Common Stock on such day as reported on the principal Trading Market on which the Common Stock is listed or traded, or (ii) if the Common Stock is not listed on a Trading Market, the closing bid price for a share of Common Stock on such day in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then listed or quoted on the OTC Bulletin Board, the closing bid price for a share of Common Stock on such day in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices).

"**Other Property**" shall have the meaning set forth in Section 4.5.

"**Person**" shall mean any individual, sole proprietorship, partnership, joint venture, trust, incorporated organization, association, Company, institution, public benefit Company, entity or government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

"**Securities Act**" shall mean the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Trading Day" means (i) a day on which the Common Stock is traded on a Trading Market, or (ii) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then quoted on the OTC Bulletin Board, a day on which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices); *provided*, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then the term "Trading Day" shall mean a Business Day.

"Trading Market" means whichever of the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, or the Nasdaq Bulletin Board on which the Common Stock is listed or quoted for trading on the date in question.

"**Transfer**" shall mean any disposition of any Warrant or Warrant Shares or of any interest in either thereof, which would constitute a sale thereof within the meaning of the Securities Act.

"**Warrant Shares**" shall mean the shares of Common Stock issued or issuable to the Holder of this Warrant upon the exercise thereof.

"**Warrants**" shall mean this Warrant and all warrants issued upon transfer, division or combination of, or in substitution for, any thereof. All Warrants shall at all times be identical as to terms and conditions and date, except as to the number of shares of Common Stock for which they may be exercised.

2. EXERCISE OF WARRANT

2.1 Manner of Exercise

From and after six (6) months following the Issuance Date (June 30, 2010) and until 5:00 p.m., Eastern Standard Time, on the Expiration Date, the Holder may exercise this Warrant, on any Business Day, for all or any part of the number of shares of Common Stock purchasable hereunder, subject to the further restriction in the next paragraph.

Notwithstanding any other provision of this Warrant or the Securities Purchase Agreement to the contrary, the Holder shall have no right to purchase any Warrant Shares upon exercise of this Warrant unless and until the Company and/or its affiliates have received at least $10 million by June 30, 2013 under accepted and executed contracts or purchase orders from Holder. Holder shall be entitled to exercise warrants to purchase 400,000 shares of Common Stock upon reaching the threshold of $10 million and shall be entitled to exercise warrants to purchase 200,000 additional shares of Common Stock upon reaching the threshold of $15 million. The Company reserves the right to initially accept or reject the individual contracts or purchase orders from Holder which may be applied towards the threshold attainment.

In order to exercise this Warrant, in whole or in part, the Holder shall surrender this Warrant to the Company at its principal office at 32000 Aurora Road, Solon, Ohio 44139, or at the office or agency designated by the Company pursuant to Section 12, together with a

written notice of the Holder's election to exercise this Warrant, which notice shall specify the number of shares of Common Stock to be purchased, and shall be accompanied by payment of the Exercise Price in cash or wire transfer or cashier's check drawn on a United States bank. Such notice shall be substantially in the form of the subscription form appearing at the end of this Warrant as Exhibit A, duly executed by the Holder or his agent or attorney. Upon receipt of the items referred to above, the Company shall, as promptly as practicable, execute or cause to be executed and deliver or cause to be delivered to the Holder a certificate or certificates representing the aggregate number of full shares of Common Stock issuable upon such exercise, together with cash in lieu of any fraction of a share, as hereinafter provided. The stock certificate or certificates so delivered shall be, to the extent possible, in such denomination or denominations as the Holder shall request in the notice and shall be registered in the name of the Holder or, subject to Section 9, such other name as shall be designated in the notice. This Warrant shall be deemed to have been exercised and such certificate or certificates shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become the holder of record of such shares for all purposes, as of the date the notice, together with the cash or check or wire transfer of funds and this Warrant is received by the Company as described above and all taxes required to be paid by the Holder, if any, pursuant to Section 2.2 prior to the issuance of such shares have been paid, provided that if the Warrant is exercised in connection with a merger, reorganization or other Fundamental Corporate Change, such exercise may be made conditional upon the consummation of such event. If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased shares of Common Stock called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant, or, at the request of the Holder, appropriate notation may be made on this Warrant and the same returned to the Holder. Notwithstanding any provision herein to the contrary, the Company shall not be required to register shares in the name of any Person who acquired this Warrant (or part hereof) or any Warrant Shares otherwise than in accordance with this Warrant.

2.2 Payment of Taxes and Charges

All shares of Common Stock issuable upon the exercise of this Warrant pursuant to the terms hereof shall be validly issued, fully paid and nonassessable, freely tradable and without any preemptive rights. The Company shall pay all expenses in connection with, and all taxes and other governmental charges that may be imposed with respect to, the issuance or delivery thereof, unless such tax or charge is a tax on income imposed by law upon the Holder in connection with the issuance of the Common Stock to a person other than the Holder, in which case such taxes or charges shall be paid by the Holder.

2.3 Fractional Shares

The Company shall not be required to issue a fractional share of Common Stock upon exercise of any Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the Market Price per share of Common Stock as of the date of exercise of the Warrant giving rise to such fraction of a share.

2.4 Cashless Exercise During Event

Notwithstanding any other provision contained herein to the contrary, from and after the six-month anniversary of the Closing Date, whenever an Event has occurred and is continuing and at any time after the expiration of the Effectiveness Period, the Holder may elect to receive, without the payment by the Holder of the aggregate Exercise Price in respect of the shares of Common Stock to be acquired, shares of Common Stock of equal value to the value of this Warrant, or any specified portion hereof, by the surrender of this Warrant (or such portion of this Warrant being so exercised) together with a subscription form in the form attached hereto as Exhibit A, with appropriate modification to reflect such cashless exercise, duly executed, to the Company. Thereupon, the Company shall issue to the Holder such number of fully paid, validly issued and nonassessable shares of Common Stock as is computed using the following formula:

$$X = \frac{Y\,(A - B)}{A}$$

where

X = the number of shares of Common Stock to which the Holder is entitled upon such cashless exercise;

Y = the total number of shares of Common Stock covered by this Warrant for which the Holder has surrendered purchase rights at such time for cashless exercise (including both shares to be issued to the Holder and shares as to which the purchase rights are to be canceled as payment therefor);

A = the Market Price of one share of Common Stock as at the date the net issue election is made; and

B = the Warrant Price in effect under this Warrant at the time the net issue election is made.

2.5 Buy-In

If at any time when a Registration Statement is in effect or required to be in effect with respect to the Warrant Shares, as provided for by the Securities Purchase Agreement, (a) a certificate representing the Warrant Shares is not delivered to the Holder within three (3) Business Days of the due exercise of this Warrant by the Holder and (b) prior to the time such certificate is received by the Holder, the Holder, or any third party on behalf of the Holder or for the Holder's account, purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of shares represented by such certificate (a **"Buy-In"**), then the Company shall pay in cash to the Holder (for costs incurred either directly by such Holder or on behalf of a third party) the amount by which the total purchase price paid for Common Stock as a result of the Buy-In (including brokerage commissions, if any) exceeds the proceeds received by such Holder as a result of the sale to which such Buy-In relates. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In.

2.6 Agreement not to Exercise Rights

The Holder agrees that the Holder will not exercise any rights under this Warrant, including without limitation the right to exercise or assign the Warrant, without first having received written notice from the Company that the Warrant has been approved by the Company's Board of Directors or a committee of the Board.

3. TRANSFER, DIVISION AND COMBINATION

3.1 Transfer

Subject to compliance with Section 9, transfer of this Warrant and all rights hereunder, in whole or in part, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant at the principal office of the Company referred to in Section 2.1 or the office or agency designated by the Company pursuant to Section 12, together with a written assignment of this Warrant substantially in the form of Exhibit B hereto duly executed by the Holder or his agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall, subject to Section 9, execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be canceled. A Warrant, if properly assigned in compliance with Section 9, may be exercised by a new Holder for the purchase of shares of Common Stock without having a new warrant issued.

3.2 Division and Combination

Subject to Section 9, this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office or agency of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or his agent or attorney. Subject to compliance with Sections 3.1 and 9, as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice.

3.3 Expenses

The Company shall prepare, issue and deliver at its own expense (other than transfer taxes) the new Warrant or Warrants under this Section 3.

3.4 Maintenance of Books

The Company agrees to maintain, at its aforesaid office or agency, books for the registration and the registration of transfers of the Warrants.

4. ADJUSTMENTS

The number of shares of Common Stock for which this Warrant is exercisable, or the price at which such shares may be purchased upon exercise of this Warrant, shall be subject to adjustment from time to time as set forth in this Section 4. The Company shall give the Holder notice of any event described below which requires an adjustment pursuant to this Section 4 at the time of such event.

4.1 Stock Dividends, Subdivisions and Combinations

If at any time the Company shall:

(a) declare or pay to the holders of its Common Stock a dividend payable in, or other distribution of, shares of Common Stock or in Convertible Securities;

(b) subdivide its outstanding shares of Common Stock into a larger number of shares of Common Stock; or

(c) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock;

then (i) the number of shares of Common Stock for which this Warrant is exercisable immediately after the occurrence of any such event shall be adjusted to equal the number of shares of Common Stock which a record holder of the same number of shares of Common Stock for which this Warrant is exercisable immediately prior to the occurrence of such event would own or be entitled to receive after the occurrence of such event, and (ii) the then-current Exercise Price shall be adjusted to equal (A) the then-current Exercise Price multiplied by the number of shares of Common Stock for which this Warrant is exercisable immediately prior to the adjustment divided by (B) the number of shares for which this Warrant is exercisable immediately after such adjustment.

4.2 Certain Other Distributions

If at any time the Company shall declare or pay to the holders of its Common Stock any dividend or other distribution of:

(a) cash;

(b) any evidences of its indebtedness, any shares of its stock or any other securities or property of any nature whatsoever (other than cash, Convertible Securities or additional shares of Common Stock); any warrants or other rights to subscribe for or purchase any evidences of its indebtedness, any shares of its stock or any other securities or property of any nature whatsoever (other than cash, Convertible Securities or additional shares of Common Stock);

then, upon exercise of this Warrant, the Holder shall be entitled to receive such dividend or distribution as if the Holder had exercised this Warrant prior to the date of such dividend or distribution. A reclassification of the Common Stock (other than a change in par

value, or from par value to no par value or from no par value to par value) into shares of Common Stock and shares of any other class of stock shall be deemed a distribution by the Company to the holders of its Common Stock of such shares of such other class of stock within the meaning of this Section 4.2 and, if the outstanding shares of Common Stock shall be changed into a larger or smaller number of shares of Common Stock as a part of such reclassification, such change shall be deemed a subdivision or combination, as the case may be, of the outstanding shares of Common Stock within the meaning of Section 4.1.

4.3 Dilutive Issuances

If at any time after the Issuance Date the Company shall issue or sell shares of Common Stock or Convertible Securities (other than (i) securities issued or issuable in Excluded Issuances or (ii) shares of Common Stock issued as a result of a dividend or other distribution on the Common Stock payable in Common Stock or (iii) a subdivision of outstanding shares of Common Stock), without consideration or for a consideration per share less than $0.86, the Exercise Price shall be reduced to a price (calculated to the nearest cent) (i) determined in accordance with the following formula:

$$\text{New Exercise Price} = \frac{P1\ Q1 + P2\ Q2}{Q1 + Q2}$$

where:

P1	=	Applicable Exercise Price in effect immediately prior to such new issue or sale.
Q1	=	Number of shares of Common Stock outstanding plus the number of shares of Common Stock issuable upon conversion or exercise of Convertible Securities outstanding immediately prior to such new issue or sale.
P2	=	100% of the weighted average price per share of Common Stock received or deemed by the Company upon such new issue or sale.
Q2	=	Number of shares of Common Stock issued or sold, or deemed to have been issued, in the subject transaction.

For purposes of this Section 4.3, upon the sale or issuance of Convertible Securities, the maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of such Convertible Securities (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) shall be deemed to be issued as of the time of such issue or sale and the consideration deemed received for such shares of Common Stock shall be the consideration actually received by the Company for the issue of such Convertible Securities plus the minimum additional consideration to be received by the Company upon the full exercise, conversion or exchange of such Convertible Securities. Insofar as any consideration received, or to be received, by the Company consists of property other than cash, such consideration shall be computed at the fair value thereof at the time of such issue or sale, as determined in good faith by the Board.

4.4 Other Provisions Applicable to Adjustments under this Section

The following provisions shall be applicable to the making of adjustments of the number of shares of Common Stock for which this Warrant is exercisable and the current Exercise Price provided for in this Section 4:

(a) **When Adjustments to be Made.** The adjustments required by this Section 4 shall be made whenever and as often as any specified event requiring an adjustment shall occur. For the purpose of any adjustment, any specified event shall be deemed to have occurred at the close of business on the date of its occurrence.

(b) **Fractional Interests.** In computing adjustments under this Section 4, fractional interests in Common Stock shall be taken into account to the nearest 1/10th of a share.

(c) **When Adjustment not Required.** If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or distribution or subscription or purchase rights and shall, thereafter and before the distribution to the holders thereof, legally abandon its plan to pay or deliver such dividend, distribution, subscription or purchase rights, then thereafter no adjustment shall be required by reason of the taking of such record and any such adjustment previously made in respect thereof shall be rescinded and annulled.

4.5 Reorganization, Reclassification, Merger, Consolidation or Disposition of Assets

In case the Company shall reorganize its capital, reclassify its capital stock, consolidate or merge with or into another Person (where the Company is not the survivor or where there is a change in or distribution with respect to the Common Stock of the Company), or sell, convey, transfer or otherwise dispose of all or substantially all its property, assets or business to another Person, or effectuate a transaction or series of related transactions in which more than 50% of the voting power of the Company is disposed of (each, a "**Fundamental Corporate Change**") and, pursuant to the terms of such Fundamental Corporate Change, shares of common stock of the successor or acquiring Company, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring Company ("**Other Property**"), are to be received by or distributed to the holders of Common Stock, then the Holder shall have the right thereafter to receive, upon exercise of the Warrant, such number of shares of common stock of the successor or acquiring Company or of the Company, if it is the surviving Company, and Other Property as is receivable upon or as a result of such Fundamental Corporate Change by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Corporate Change. In case of any such Fundamental Corporate Change, this Warrant shall expire and be of no further force and effect on the closing date of such Fundamental Corporate Change and, in lieu of any other rights of the Holder hereunder, the Holder shall have the right to receive, with within five Business Days of the closing of such Fundamental Corporate Change, cash in an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of such Fundamental Corporate Change. In the event the Company and the Holder are unable to agree

on the Black Scholes Value, the parties shall submit the matter to a mutually agreeable accounting firm of regional or national stature for the purpose of making a binding determination of the Black Scholes Value.

4.6 Other Action Affecting Common Stock

In case at any time or from time to time the Company shall take any action in respect of its Common Stock, other than any action described in this Section 4, or any other event occurs, which would have a materially adverse effect upon the rights of the Holder, the number of shares of Common Stock and/or the purchase price thereof shall be adjusted in such manner as may be equitable in the circumstances, as determined in good faith by the Board of Directors of the Company.

4.7 Nasdaq Limitation; Par Value Limitation

(a) Notwithstanding any other provision in Sections 4.3 or 4.6 to the contrary, if a reduction in the Exercise Price pursuant to Sections 4.3 or 4.6 would require the Company to obtain stockholder approval of the transactions contemplated by the Purchase Agreement pursuant to Nasdaq Rule 5635 and such stockholder approval has not been obtained, (i) the Exercise Price shall be reduced under Section 4.3, or may be reduced under Section 4.6, to the maximum extent that would not require stockholder approval under such Rule, and (ii) the Company shall under Section 4.3, or may under Section 4.6, use its commercially reasonable efforts to obtain such stockholder approval as soon as reasonably practicable, including by calling a special meeting of stockholders to vote on such Exercise Price adjustment. This provision shall not restrict the number of shares of Common Stock which a Warrantholder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Corporate Change.

(b) Notwithstanding anything herein to the contrary, the Company agrees not to enter into any transaction which, by reason of any adjustment hereunder, would cause the Exercise Price to be less than the par value per share of Common Stock**.**

(c) Notwithstanding anything herein to the contrary, the Company agrees not to adjust the number of its shares of Common Stock that may be issued to the Holder of the Warrant as a result of any change to the Warrant pursuant to this Section 4 in any way that would violate Nasdaq Rules.

5. NOTICES TO THE HOLDER

5.1 Notice of Adjustments

Whenever the number of shares of Common Stock for which this Warrant is exercisable, or whenever the price at which a share of such Common Stock may be purchased upon exercise of the Warrants, shall be adjusted pursuant to Section 4, the Company shall forthwith prepare a certificate to be executed by the chief financial officer of the Company setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment was calculated (including a description of the basis on which the Board of

Directors of the Company determined the fair value of any evidences of indebtedness, shares of stock, other securities or property or warrants or other subscription or purchase rights referred to in Section 4.2), specifying the number of shares of Common Stock for which this Warrant is exercisable and (if such adjustment was made pursuant to Section 4.2 or 4.5) describing the number and kind of any other shares of stock or Other Property for which this Warrant is exercisable, and any change in the purchase price or prices thereof, after giving effect to such adjustment or change. The Company shall promptly cause a signed copy of such certificate to be delivered to the Holder in accordance with Section 14.2. The Company shall keep, along with the transfer register maintained in accordance with Section 3.4, copies of all such certificates and cause the same to be available for inspection at said office during normal business hours by the Holder or any prospective purchaser of a Warrant designated by the Holder.

5.2 Notice of Corporate Action

If at any time:

(a) the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, or any right to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property, or to receive any other right; or

(b) there shall be any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any consolidation or merger of the Company with, or any sale, transfer or other disposition of all or substantially all the property, assets or business of the Company to, another Company; or

(c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of such cases, the Company shall give to Holder (i) at least 10 days' prior written notice of the date on which a record date shall be selected for such dividend, distribution or right or for determining rights to vote in respect of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, and (ii) in the case of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, at least 10 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause also shall specify (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, the date on which the holders of Common Stock shall be entitled to any such dividend, distribution or right, and the amount and character thereof, and (ii) the date on which any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up is to take place and the time, if any such time is to be fixed, as of which the holders of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up. Each such written notice shall be sufficiently given if addressed to the Holder at the last address of the Holder appearing on the books of the Company and delivered in accordance with Section 14.2.

6. NO IMPAIRMENT

The Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities or other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (c) use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

Upon the request of the Holder, the Company will at any time during the period this Warrant is outstanding acknowledge in writing, in form satisfactory to the Holder, the continuing validity of this Warrant and the obligations of the Company hereunder.

7. RESERVATION AND AUTHORIZATION OF COMMON STOCK

From and after the Issuance Date, the Company shall at all times reserve and keep available for issuance upon the exercise of Warrants such number of its authorized but unissued shares of Common Stock as will be sufficient to permit the exercise in full of all outstanding Warrants. All shares of Common Stock which shall be so issuable, when issued upon exercise of any Warrant and payment therefor in accordance with the terms of such Warrant, shall be duly and validly issued and fully paid and nonassessable and not subject to preemptive rights.

Before taking any action which would cause an adjustment reducing the then-current Exercise Price below the then par value, if any, of the shares of Common Stock issuable upon exercise of the Warrants, the Company shall take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of such Common Stock at such adjusted Exercise Price.

Before taking any action which would result in an adjustment in the number of shares of Common Stock for which this Warrant is exercisable or in the then-current Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

8. TAKING OF RECORD; STOCK AND WARRANT TRANSFER BOOKS

In the case of all dividends or other distributions by the Company to the holders of its Common Stock with respect to which any provision of Section 4 refers to the taking of

record of such holders, the Company will in each case take such a record and will take such record as of the close of business on a Business Day. The Company will not at any time, except upon dissolution, liquidation or winding up of the Company, close its stock transfer books or Warrant transfer books so as to result in preventing or delaying the exercise or transfer of any Warrant.

9. RESTRICTIONS ON TRANSFERABILITY

The Warrants and the Warrant Shares shall not be transferred, hypothecated or assigned before satisfaction of the conditions specified in the legend affixed to the first page of this Warrant, which conditions are intended, in part, to ensure compliance with the provisions of the Securities Act with respect to the Transfer of any Warrant or any Warrant Shares. The Holder, by acceptance of this Warrant, agrees to be bound by the provisions of this Section 9.

10. LIMITATIONS ON EXERCISE.

(a) Notwithstanding anything to the contrary contained herein, the number of Warrant Shares that may be acquired by the Warrantholder upon any exercise of this Warrant (or otherwise in respect hereof) shall be limited to the extent necessary to insure that, following such exercise (or other issuance), the total number of shares of Common Stock then beneficially owned by such Warrantholder and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with the Warrantholder's for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), does not exceed 19.9% of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such exercise). For such purposes, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. This provision shall not restrict the number of shares of Common Stock which a Warrantholder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Corporate Change.

11. LOSS OR MUTILATION

Upon receipt by the Company from the Holder of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of this Warrant and indemnity reasonably satisfactory to it (it being understood that the written agreement of the Holder shall be sufficient indemnity), and in case of mutilation upon surrender and cancellation hereof, the Company will execute and deliver in lieu hereof a new Warrant of like tenor to the Holder; *provided,* in the case of mutilation no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

12. OFFICE OF THE COMPANY

As long as any of the Warrants remain outstanding, the Company shall maintain an office or agency (which may be the principal executive offices of the Company) where the

Warrants may be presented for exercise, registration of transfer, division or combination as provided in this Warrant.

13. LIMITATION OF LIABILITY

No provision hereof, in the absence of affirmative action by the Holder to purchase shares of Common Stock, and no enumeration herein of the rights or privileges of the Holder hereof, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company. Nothing in the foregoing shall be construed in any manner to limit or deny the liability of a Holder in any other capacity, including, without limitation, as a director of the Company.

14. MISCELLANEOUS

14.1 Nonwaiver

No course of dealing or any delay or failure to exercise any right hereunder on the part of the Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. No waiver by the Holder of any right hereunder on any one occasion shall operate as a waiver of such right on any other occasion.

14.2 Notice Generally

Except as may be otherwise provided herein, any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the facsimile number specified in this Section prior to 6:30 p.m. eastern time on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Business Day or later than 6:30 p.m. eastern time on any Business Day, (c) the Business Day following the date of transmission, if sent by a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be the same as provided in the Securities Purchase Agreement; or such other address as may be designated in writing hereafter, in the same manner, by such addressee.

14.3 Remedies

The Holder in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under Section 2 of this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of Section 2 of this Warrant and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

14.4 Successors and Assigns

Subject to the provisions of Sections 3.1 and 9, this Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant and, with respect to Section 9 hereof, the holders of Warrant Shares, and shall be enforceable by any such holder or the holder of Warrant Shares.

14.5 Amendment

This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

14.6 Severability

Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall only be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant.

14.7 Headings

The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

14.8 Governing Law

This Warrant shall be governed by the laws of the State of Delaware, without regard to the provisions thereof relating to conflicts of law.

14.9 Disputes

In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the securities or other property deliverable upon exercise of this Warrant, the Company shall promptly issue and deliver to the Holder the securities or other properties that are not in dispute.

(Signature appears on the following page.)

In Witness Whereof, the Company has caused this Warrant to be duly executed by the undersigned, thereunto duly authorized, as of the date written below.

Dated: December 31, 2009

Energy Focus, Inc.

By: /s/ Joseph G. Kaveski
Name: Joseph G. Kaveski
Title: Chief Executive Officer

EXHIBIT A

SUBSCRIPTION FORM

[To be executed only upon exercise of Warrant]

The undersigned registered owner of this Warrant irrevocably exercises this Warrant for the purchase of _____ shares of Common Stock of Energy Focus, Inc. and herewith makes payment therefor, all at the price and on the terms and conditions specified in this Warrant and requests that certificates for the shares of Common Stock hereby purchased (and any securities or other property issuable upon such exercise) be issued in the name of and delivered to

_____

whose address is

_____

and, if such shares of Common Stock shall not include all of the shares of Common Stock issuable as provided in this Warrant, that a new Warrant of like tenor and date for the balance of the shares of Common Stock issuable hereunder be delivered to the undersigned.

_____
(Name of Registered Owner)

_____
(Signature of Registered Owner)

_____
(Street Address)

_____
(City) (State) (Zip Code)

Notice: The signature on this subscription must correspond with the name as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under this Warrant, with respect to the number of shares of Common Stock set forth below:

Name and Address of Assignee	No. of Shares of Common Stock

and does hereby irrevocably constitute and appoint

_____

attorney-in-fact to register such transfer on the books of Energy Focus, Inc. maintained for the purpose, with full power of substitution in the premises.

Dated: _____

_____

(Name of Registered Owner)

_____

(Signature of Registered Owner)

Notice: The signature on this assignment must correspond with the name as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatsoever.

THIS COMMON STOCK PURCHASE WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED IN VIOLATION OF SUCH ACT, THE RULES AND REGULATIONS THEREUNDER OR THE PROVISIONS OF THIS COMMON STOCK PURCHASE WARRANT.

Number of Shares of Common Stock: [_____]

Warrant No. _____

COMMON STOCK PURCHASE WARRANT

To Purchase Common Stock of
ENERGY FOCUS, INC.

THIS IS TO CERTIFY THAT [_____], or registered assign (the "Holder"), is entitled, at any time from the Issuance Date (as hereinafter defined) to the Expiration Date (as hereinafter defined), except as provided herein, to purchase from Energy Focus, Inc., a Delaware corporation (the "**Company**"), [_____ (_____)] shares of Common Stock (as hereinafter defined and subject to adjustment as provided herein), in whole or in part, including fractional parts, at a purchase price of equal to $0.01 (subject to adjustment as provided herein, the "**Exercise Price**"), all on the terms and conditions and pursuant to the provisions hereinafter set forth.

This Warrant is issued pursuant to, and the Holder is entitled to the benefits of, that certain Warrant Acquisition Agreement of even date by and between the Company and the investor party thereto (the "**Securities Purchase Agreement**") and that certain Bonding Support Agreement of even date by and between the Company and the investor party thereto (the "**Bonding Support Agreement**"). Capitalized terms used herein without definition are used with the definitions assigned thereto in such Securities Purchase Agreement.

1. DEFINITIONS

As used in this Common Stock Purchase Warrant (this "**Warrant**"), the following terms shall have the respective meanings set forth below:

"**Business Day**" shall mean any day that is not a Saturday or Sunday or a day on which banks in New York City, New York are required or permitted to be closed in the City of New York.

"**Issuance Date**" shall mean December 29, 2009.

"**Commission**" shall mean the Securities and Exchange Commission or any other federal agency then administering the Securities Act and other federal securities laws.

"**Common Stock**" shall mean (except where the context otherwise indicates) the Common Stock, par value $0.0001 per share, of the Company as constituted on the Issuance Date, and any capital stock into which such Common Stock may thereafter be changed, and shall

also include (i) capital stock of the Company of any other class (regardless of how denominated) issued to the holders of shares of Common Stock upon any reclassification thereof which is also not preferred as to dividends or assets over any other class of stock of the Company and which is not subject to redemption and (ii) shares of common stock of any successor or acquiring Company received by or distributed to the holders of Common Stock of the Company in the circumstances contemplated by Section 4.5.

"**Convertible Securities**" shall mean options, evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable, with or without payment of additional consideration in cash or property, for shares of Common Stock, either immediately or upon the occurrence of a specified date or a specified event.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

"**Exercise Period**" shall mean the period during which this Warrant is exercisable pursuant to Section 2.1.

"**Expiration Date**" shall mean the fifth anniversary hereof.

"**Fundamental Corporate Change**" shall have the meaning set forth in Section 4.5.

"**Holder**" shall mean the Person in whose name the Warrant or Warrant Shares set forth herein is registered on the books of the Company maintained for such purpose.

"**Market Price**" shall mean, on any date of determination, (i) the closing price of a share of Common Stock on such day as reported on the principal Trading Market on which the Common Stock is listed or traded, or (ii) if the Common Stock is not listed on a Trading Market, the closing bid price for a share of Common Stock on such day in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then listed or quoted on the OTC Bulletin Board, the closing bid price for a share of Common Stock on such day in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices).

"**Other Property**" shall have the meaning set forth in Section 4.5.

"**Person**" shall mean any individual, sole proprietorship, partnership, joint venture, trust, incorporated organization, association, Company, institution, public benefit Company, entity or government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

"**Securities Act**" shall mean the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Trading Day" means (i) a day on which the Common Stock is traded on a Trading Market, or (ii) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then quoted on the OTC Bulletin Board, a day on which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices); *provided*, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then the term "Trading Day" shall mean a Business Day.

"Trading Market" means whichever of the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, or the Nasdaq Bulletin Board on which the Common Stock is listed or quoted for trading on the date in question.

"**Transfer**" shall mean any disposition of any Warrant or Warrant Shares or of any interest in either thereof, which would constitute a sale thereof within the meaning of the Securities Act.

"**Warrant Shares**" shall mean the shares of Common Stock issued or issuable to the Holder of this Warrant upon the exercise thereof.

"**Warrants**" shall mean this Warrant and all warrants issued upon transfer, division or combination of, or in substitution for, any thereof. All Warrants shall at all times be identical as to terms and conditions and date, except as to the number of shares of Common Stock for which they may be exercised.

2. EXERCISE OF WARRANT

2.1 Manner of Exercise

From the Issuance Date and until 5:00 p.m., Eastern Standard Time, on the Expiration Date, the Holder may exercise this Warrant, on any Business Day, for all or any part of the number of shares of Common Stock purchasable hereunder, subject to the further restriction in the next paragraph and in Section 2.6.

In order to exercise this Warrant, in whole or in part, the Holder shall surrender this Warrant to the Company at its principal office at 32000 Aurora Road, Solon, Ohio 44139, or at the office or agency designated by the Company pursuant to Section 12, together with a written notice of the Holder's election to exercise this Warrant, which notice shall specify the number of shares of Common Stock to be purchased, and shall be accompanied by payment of the Exercise Price in cash or wire transfer or cashier's check drawn on a United States bank. Such notice shall be substantially in the form of the subscription form appearing at the end of this Warrant as Exhibit A, duly executed by the Holder or his agent or attorney. Upon receipt of the items referred to above, the Company shall, as promptly as practicable, execute or cause to be executed and deliver or cause to be delivered to the Holder a certificate or certificates representing the aggregate number of full shares of Common Stock issuable upon such exercise, together with cash in lieu of any fraction of a share, as hereinafter provided. The stock certificate or certificates so delivered shall be, to the extent possible, in such denomination or

denominations as the Holder shall request in the notice and shall be registered in the name of the Holder or, subject to Section 9, such other name as shall be designated in the notice. This Warrant shall be deemed to have been exercised and such certificate or certificates shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become the holder of record of such shares for all purposes, as of the date the notice, together with the cash or check or wire transfer of funds and this Warrant is received by the Company as described above and all taxes required to be paid by the Holder, if any, pursuant to Section 2.2 prior to the issuance of such shares have been paid, provided that if the Warrant is exercised in connection with a merger, reorganization or other Fundamental Corporate Change, such exercise may be made conditional upon the consummation of such event. If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased shares of Common Stock called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant, or, at the request of the Holder, appropriate notation may be made on this Warrant and the same returned to the Holder. Notwithstanding any provision herein to the contrary, the Company shall not be required to register shares in the name of any Person who acquired this Warrant (or part hereof) or any Warrant Shares otherwise than in accordance with this Warrant.

2.2 Payment of Taxes and Charges

All shares of Common Stock issuable upon the exercise of this Warrant pursuant to the terms hereof shall be validly issued, fully paid and nonassessable, freely tradable and without any preemptive rights. The Company shall pay all expenses in connection with, and all taxes and other governmental charges that may be imposed with respect to, the issuance or delivery thereof, unless such tax or charge is a tax on income imposed by law upon the Holder in connection with the issuance of the Common Stock to a person other than the Holder, in which case such taxes or charges shall be paid by the Holder.

2.3 Fractional Shares

The Company shall not be required to issue a fractional share of Common Stock upon exercise of any Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the Market Price per share of Common Stock as of the date of exercise of the Warrant giving rise to such fraction of a share.

2.4 Cashless Exercise During Event

Notwithstanding any other provision contained herein to the contrary, from and after the six-month anniversary of the Closing Date, whenever an Event has occurred and is continuing and at any time after the expiration of the Effectiveness Period, the Holder may elect to receive, without the payment by the Holder of the aggregate Exercise Price in respect of the shares of Common Stock to be acquired, shares of Common Stock of equal value to the value of this Warrant, or any specified portion hereof, by the surrender of this Warrant (or such portion of this Warrant being so exercised) together with a subscription form in the form attached hereto as Exhibit A, with appropriate modification to reflect such cashless exercise, duly executed, to the

Company. Thereupon, the Company shall issue to the Holder such number of fully paid, validly issued and nonassessable shares of Common Stock as is computed using the following formula:

$$X = \frac{Y (A — B)}{A}$$

where

X = the number of shares of Common Stock to which the Holder is entitled upon such cashless exercise;

Y = the total number of shares of Common Stock covered by this Warrant for which the Holder has surrendered purchase rights at such time for cashless exercise (including both shares to be issued to the Holder and shares as to which the purchase rights are to be canceled as payment therefor);

A = the Market Price of one share of Common Stock as at the date the net issue election is made; and

B = the Warrant Price in effect under this Warrant at the time the net issue election is made.

2.5 Buy-In

If at any time when a Registration Statement is in effect or required to be in effect with respect to the Warrant Shares, as provided for by the Securities Purchase Agreement, (a) a certificate representing the Warrant Shares is not delivered to the Holder within three (3) Business Days of the due exercise of this Warrant by the Holder and (b) prior to the time such certificate is received by the Holder, the Holder, or any third party on behalf of the Holder or for the Holder's account, purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of shares represented by such certificate (a **"Buy-In"**), then the Company shall pay in cash to the Holder (for costs incurred either directly by such Holder or on behalf of a third party) the amount by which the total purchase price paid for Common Stock as a result of the Buy-In (including brokerage commissions, if any) exceeds the proceeds received by such Holder as a result of the sale to which such Buy-In relates. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In.

2.6 Agreement not to Exercise Rights; Reduction in Shares

(a) This Warrant is not exercisable unless and until approved by the Company's shareholders at its annual meeting in 2010 or at a special shareholder meeting in 2010 called for that purpose. If shareholders do not approve this Warrant in 2010 at a special or the annual meeting, this Warrant and Securities Purchase Agreement shall terminate.

(b) The Holder agrees that the Holder will not exercise any rights under this Warrant or under the Securities Purchase Agreement, including without limitation the right to exercise this

Warrant or the right to assign this Warrant or the Securities Purchase Agreement, without first having received written notice from the Company that the Securities Purchase Agreement and this Warrant have been approved by the Company's Board of Directors or a committee of the Board, and by the Company's shareholders in 2010 at a special or the annual meeting.

(c) If the Company replaces and releases, or simply releases, the Deposit or the Letter of Credit covered by the Bonding Support Agreement by June 30, 2010, the number of shares covered by this Warrant shall reduce to a number of shares equal to the product of (i) the number of full months elapsed in 2010 times (ii) [_____] [total number of shares divided by twelve].

3. TRANSFER, DIVISION AND COMBINATION

3.1 Transfer

Subject to compliance with Section 9, transfer of this Warrant and all rights hereunder, in whole or in part, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant at the principal office of the Company referred to in Section 2.1 or the office or agency designated by the Company pursuant to Section 12, together with a written assignment of this Warrant substantially in the form of Exhibit B hereto duly executed by the Holder or his agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall, subject to Section 9, execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be canceled. A Warrant, if properly assigned in compliance with Section 9, may be exercised by a new Holder for the purchase of shares of Common Stock without having a new warrant issued.

3.2 Division and Combination

Subject to Section 9, this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office or agency of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or his agent or attorney. Subject to compliance with Sections 3.1 and 9, as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice.

3.3 Expenses

The Company shall prepare, issue and deliver at its own expense (other than transfer taxes) the new Warrant or Warrants under this Section 3.

3.4 Maintenance of Books

The Company agrees to maintain, at its aforesaid office or agency, books for the registration and the registration of transfers of the Warrants.

4. ADJUSTMENTS

The number of shares of Common Stock for which this Warrant is exercisable, or the price at which such shares may be purchased upon exercise of this Warrant, shall be subject to adjustment from time to time as set forth in this Section 4. The Company shall give the Holder notice of any event described below which requires an adjustment pursuant to this Section 4 at the time of such event.

4.1 Stock Dividends, Subdivisions and Combinations

If at any time the Company shall:

(a) declare or pay to the holders of its Common Stock a dividend payable in, or other distribution of, shares of Common Stock or in Convertible Securities;

(b) subdivide its outstanding shares of Common Stock into a larger number of shares of Common Stock; or

(c) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock;

then (i) the number of shares of Common Stock for which this Warrant is exercisable immediately after the occurrence of any such event shall be adjusted to equal the number of shares of Common Stock which a record holder of the same number of shares of Common Stock for which this Warrant is exercisable immediately prior to the occurrence of such event would own or be entitled to receive after the occurrence of such event, and (ii) the then-current Exercise Price shall be adjusted to equal (A) the then-current Exercise Price multiplied by the number of shares of Common Stock for which this Warrant is exercisable immediately prior to the adjustment divided by (B) the number of shares for which this Warrant is exercisable immediately after such adjustment.

4.2 Certain Other Distributions

If at any time the Company shall declare or pay to the holders of its Common Stock any dividend or other distribution of:

(a) cash;

(b) any evidences of its indebtedness, any shares of its stock or any other securities or property of any nature whatsoever (other than cash, Convertible Securities or additional shares of Common Stock); any warrants or other rights to subscribe for or purchase any evidences of its indebtedness, any shares of its stock or any other securities or property of any nature whatsoever (other than cash, Convertible Securities or additional shares of Common Stock);

then, upon exercise of this Warrant, the Holder shall be entitled to receive such dividend or distribution as if the Holder had exercised this Warrant prior to the date of such dividend or distribution. A reclassification of the Common Stock (other than a change in par

value, or from par value to no par value or from no par value to par value) into shares of Common Stock and shares of any other class of stock shall be deemed a distribution by the Company to the holders of its Common Stock of such shares of such other class of stock within the meaning of this Section 4.2 and, if the outstanding shares of Common Stock shall be changed into a larger or smaller number of shares of Common Stock as a part of such reclassification, such change shall be deemed a subdivision or combination, as the case may be, of the outstanding shares of Common Stock within the meaning of Section 4.1.

4.3 Dilutive Issuances

If at any time after the Issuance Date the Company shall issue or sell shares of Common Stock or Convertible Securities (other than (i) securities issued or issuable in Exempt Issuances or (ii) shares of Common Stock issued as a result of a dividend or other distribution on the Common Stock payable in Common Stock or (iii) a subdivision of outstanding shares of Common Stock), without consideration or for a consideration per share less than $0.01, the Exercise Price shall be reduced to a price (calculated to the nearest cent) (i) determined in accordance with the following formula:

$$\text{New Exercise Price} = \frac{P1\ Q1 + P2\ Q2}{Q1 + Q2}$$

where:

P1= Applicable Exercise Price in effect immediately prior to such new issue or sale.

Q1= Number of shares of Common Stock outstanding plus the number of shares of Common Stock issuable upon conversion or exercise of Convertible Securities outstanding immediately prior to such new issue or sale.

P2= 100% of the weighted average price per share of Common Stock received or deemed by the Company upon such new issue or sale.

Q2= Number of shares of Common Stock issued or sold, or deemed to have been issued, in the subject transaction.

For purposes of this Section 4.3, upon the sale or issuance of Convertible Securities, the maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of such Convertible Securities (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) shall be deemed to be issued as of the time of such issue or sale and the consideration deemed received for such shares of Common Stock shall be the consideration actually received by the Company for the issue of such Convertible Securities plus the minimum additional consideration to be received by the Company upon the full exercise, conversion or exchange of such Convertible Securities. Insofar as any consideration received, or to be received, by the Company consists of property other than cash, such consideration shall be computed at the fair value thereof at the time of such issue or sale, as determined in good faith by the Board.

4.4 Other Provisions Applicable to Adjustments under this Section

The following provisions shall be applicable to the making of adjustments of the number of shares of Common Stock for which this Warrant is exercisable and the current Exercise Price provided for in this Section 4:

(a) **When Adjustments to be Made.** The adjustments required by this Section 4 shall be made whenever and as often as any specified event requiring an adjustment shall occur. For the purpose of any adjustment, any specified event shall be deemed to have occurred at the close of business on the date of its occurrence.

(b) **Fractional Interests.** In computing adjustments under this Section 4, fractional interests in Common Stock shall be taken into account to the nearest 1/10th of a share.

(c) **When Adjustment not Required.** If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or distribution or subscription or purchase rights and shall, thereafter and before the distribution to the holders thereof, legally abandon its plan to pay or deliver such dividend, distribution, subscription or purchase rights, then thereafter no adjustment shall be required by reason of the taking of such record and any such adjustment previously made in respect thereof shall be rescinded and annulled.

4.5 Reorganization, Reclassification, Merger, Consolidation or Disposition of Assets

In case the Company shall reorganize its capital, reclassify its capital stock, consolidate or merge with or into another Person (where the Company is not the survivor or where there is a change in or distribution with respect to the Common Stock of the Company), or sell, convey, transfer or otherwise dispose of all or substantially all its property, assets or business to another Person, or effectuate a transaction or series of related transactions in which more than 50% of the voting power of the Company is disposed of (each, a "**Fundamental Corporate Change**") and, pursuant to the terms of such Fundamental Corporate Change, shares of common stock of the successor or acquiring Company, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring Company ("**Other Property**"), are to be received by or distributed to the holders of Common Stock, then the Holder shall have the right thereafter to receive, upon exercise of the Warrant, such number of shares of common stock of the successor or acquiring Company or of the Company, if it is the surviving Company, and Other Property as is receivable upon or as a result of such Fundamental Corporate Change by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Corporate Change. In case of any such Fundamental Corporate Change, this Warrant shall expire and be of no further force and effect on the closing date of such Fundamental Corporate Change and, in lieu of any other rights of the Holder hereunder, the Holder shall have the right to receive, with within five Business Days of the closing of such Fundamental Corporate Change, cash in an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of such Fundamental Corporate Change. In the event the Company and the Holder are unable to agree

on the Black Scholes Value, the parties shall submit the matter to a mutually agreeable accounting firm of regional or national stature for the purpose of making a binding determination of the Black Scholes Value.

4.6 Other Action Affecting Common Stock

In case at any time or from time to time the Company shall take any action in respect of its Common Stock, other than any action described in this Section 4, or any other event occurs, which would have a materially adverse effect upon the rights of the Holder, the number of shares of Common Stock and/or the purchase price thereof shall be adjusted in such manner as may be equitable in the circumstances, as determined in good faith by the Board of Directors of the Company.

4.7 Nasdaq Limitation; Par Value Limitation

(a) Notwithstanding any other provision in Sections 4.3 or 4.6 to the contrary, if a reduction in the Exercise Price pursuant to Sections 4.3 or 4.6 would require the Company to obtain stockholder approval of the transactions contemplated by the Purchase Agreement pursuant to Nasdaq Rule 5635 and such stockholder approval has not been obtained, (i) the Exercise Price shall be reduced under Section 4.3, or may be reduced under Section 4.6, to the maximum extent that would not require stockholder approval under such Rule, and (ii) the Company shall under Section 4.3, or may under Section 4.6, use its commercially reasonable efforts to obtain such stockholder approval as soon as reasonably practicable, including by calling a special meeting of stockholders to vote on such Exercise Price adjustment. This provision shall not restrict the number of shares of Common Stock which a Warrantholder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Corporate Change.

(b) Notwithstanding anything herein to the contrary, the Company agrees not to enter into any transaction which, by reason of any adjustment hereunder, would cause the Exercise Price to be less than the par value per share of Common Stock**.**

(c) Notwithstanding anything herein to the contrary, the Company agrees not to adjust the number of its shares of Common Stock that may be issued to the Holder of the Warrant as a result of any change to the Warrant pursuant to this Section 4 in any way that would violate Nasdaq Rules.

5. NOTICES TO THE HOLDER

5.1 Notice of Adjustments

Whenever the number of shares of Common Stock for which this Warrant is exercisable, or whenever the price at which a share of such Common Stock may be purchased upon exercise of the Warrants, shall be adjusted pursuant to Section 4, the Company shall forthwith prepare a certificate to be executed by the chief financial officer of the Company setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment was calculated (including a description of the basis on which the Board of

Directors of the Company determined the fair value of any evidences of indebtedness, shares of stock, other securities or property or warrants or other subscription or purchase rights referred to in Section 4.2), specifying the number of shares of Common Stock for which this Warrant is exercisable and (if such adjustment was made pursuant to Section 4.2 or 4.5) describing the number and kind of any other shares of stock or Other Property for which this Warrant is exercisable, and any change in the purchase price or prices thereof, after giving effect to such adjustment or change. The Company shall promptly cause a signed copy of such certificate to be delivered to the Holder in accordance with Section 14.2. The Company shall keep, along with the transfer register maintained in accordance with Section 3.4, copies of all such certificates and cause the same to be available for inspection at said office during normal business hours by the Holder or any prospective purchaser of a Warrant designated by the Holder.

5.2 Notice of Corporate Action

If at any time:

(a) the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, or any right to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property, or to receive any other right; or

(b) there shall be any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any consolidation or merger of the Company with, or any sale, transfer or other disposition of all or substantially all the property, assets or business of the Company to, another Company; or

(c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of such cases, the Company shall give to Holder (i) at least 10 days' prior written notice of the date on which a record date shall be selected for such dividend, distribution or right or for determining rights to vote in respect of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, and (ii) in the case of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, at least 10 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause also shall specify (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, the date on which the holders of Common Stock shall be entitled to any such dividend, distribution or right, and the amount and character thereof, and (ii) the date on which any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up is to take place and the time, if any such time is to be fixed, as of which the holders of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up. Each such written notice shall be sufficiently given if addressed to the Holder at the last address of the Holder appearing on the books of the Company and delivered in accordance with Section 14.2.

6. NO IMPAIRMENT

The Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities or other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (c) use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

Upon the request of the Holder, the Company will at any time during the period this Warrant is outstanding acknowledge in writing, in form satisfactory to the Holder, the continuing validity of this Warrant and the obligations of the Company hereunder.

7. RESERVATION AND AUTHORIZATION OF COMMON STOCK

From and after the Issuance Date, the Company shall at all times reserve and keep available for issuance upon the exercise of Warrants such number of its authorized but unissued shares of Common Stock as will be sufficient to permit the exercise in full of all outstanding Warrants. All shares of Common Stock which shall be so issuable, when issued upon exercise of any Warrant and payment therefor in accordance with the terms of such Warrant, shall be duly and validly issued and fully paid and nonassessable and not subject to preemptive rights.

Before taking any action which would cause an adjustment reducing the then-current Exercise Price below the then par value, if any, of the shares of Common Stock issuable upon exercise of the Warrants, the Company shall take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of such Common Stock at such adjusted Exercise Price.

Before taking any action which would result in an adjustment in the number of shares of Common Stock for which this Warrant is exercisable or in the then-current Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

8. TAKING OF RECORD; STOCK AND WARRANT TRANSFER BOOKS

In the case of all dividends or other distributions by the Company to the holders of its Common Stock with respect to which any provision of Section 4 refers to the taking of

record of such holders, the Company will in each case take such a record and will take such record as of the close of business on a Business Day. The Company will not at any time, except upon dissolution, liquidation or winding up of the Company, close its stock transfer books or Warrant transfer books so as to result in preventing or delaying the exercise or transfer of any Warrant.

9. RESTRICTIONS ON TRANSFERABILITY

The Warrants and the Warrant Shares shall not be transferred, hypothecated or assigned before satisfaction of the conditions specified in the legend affixed to the first page of this Warrant, which conditions are intended, in part, to ensure compliance with the provisions of the Securities Act with respect to the Transfer of any Warrant or any Warrant Shares. The Holder, by acceptance of this Warrant, agrees to be bound by the provisions of this Section 9.

10. LIMITATIONS ON EXERCISE.

Notwithstanding anything to the contrary contained herein, unless the shareholder approval referred to in Section 2.6 includes approval under Nasdaq Rule 5635(b), the number of Warrant Shares that may be acquired by the Warrantholder upon any exercise of this Warrant (or otherwise in respect hereof) shall be limited to the extent necessary to insure that, following such exercise (or other issuance), the total number of shares of Common Stock then beneficially owned by such Warrantholder and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with the Warrantholder's for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), does not exceed 19.9% of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such exercise). For such purposes, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. This provision shall not restrict the number of shares of Common Stock which a Warrantholder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Corporate Change.

11. LOSS OR MUTILATION

Upon receipt by the Company from the Holder of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of this Warrant and indemnity reasonably satisfactory to it (it being understood that the written agreement of the Holder shall be sufficient indemnity), and in case of mutilation upon surrender and cancellation hereof, the Company will execute and deliver in lieu hereof a new Warrant of like tenor to the Holder; *provided,* in the case of mutilation no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

12. OFFICE OF THE COMPANY

As long as any of the Warrants remain outstanding, the Company shall maintain an office or agency (which may be the principal executive offices of the Company) where the

Warrants may be presented for exercise, registration of transfer, division or combination as provided in this Warrant.

13. LIMITATION OF LIABILITY

No provision hereof, in the absence of affirmative action by the Holder to purchase shares of Common Stock, and no enumeration herein of the rights or privileges of the Holder hereof, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company. Nothing in the foregoing shall be construed in any manner to limit or deny the liability of a Holder in any other capacity, including, without limitation, as a director of the Company.

14. MISCELLANEOUS

14.1 Nonwaiver

No course of dealing or any delay or failure to exercise any right hereunder on the part of the Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. No waiver by the Holder of any right hereunder on any one occasion shall operate as a waiver of such right on any other occasion.

14.2 Notice Generally

Except as may be otherwise provided herein, any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the facsimile number specified in this Section prior to 6:30 p.m. eastern time on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Business Day or later than 6:30 p.m. eastern time on any Business Day, (c) the Business Day following the date of transmission, if sent by a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be the same as provided in the Securities Purchase Agreement; or such other address as may be designated in writing hereafter, in the same manner, by such addressee.

14.3 Remedies

The Holder in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under Section 2 of this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of Section 2 of this Warrant and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

14.4 Successors and Assigns

Subject to the provisions of Sections 3.1 and 9, this Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant and, with respect to Section 9 hereof, the holders of Warrant Shares, and shall be enforceable by any such holder or the holder of Warrant Shares.

14.5 Amendment

This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

14.6 Severability

Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall only be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant.

14.7 Headings

The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

14.8 Governing Law

This Warrant shall be governed by the laws of the State of Delaware, without regard to the provisions thereof relating to conflicts of law.

14.9 Disputes

In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the securities or other property deliverable upon exercise of this Warrant, the Company shall promptly issue and deliver to the Holder the securities or other properties that are not in dispute.

[Signature appears on following page.]

In Witness Whereof, the Company has caused this Warrant to be duly executed by the undersigned, thereunto duly authorized, as of the date written below.

Dated: December 29, 2009

Energy Focus, Inc.

By: /s/ Joseph G. Kaveski
Name: Joseph G. Kaveski
Its: Chief Executive Officer

EXHIBIT A

SUBSCRIPTION FORM

[To be executed only upon exercise of Warrant]

The undersigned registered owner of this Warrant irrevocably exercises this Warrant for the purchase of _____ shares of Common Stock of Energy Focus, Inc. and herewith makes payment therefor, all at the price and on the terms and conditions specified in this Warrant and requests that certificates for the shares of Common Stock hereby purchased (and any securities or other property issuable upon such exercise) be issued in the name of and delivered to

_____

whose address is

_____

and, if such shares of Common Stock shall not include all of the shares of Common Stock issuable as provided in this Warrant, that a new Warrant of like tenor and date for the balance of the shares of Common Stock issuable hereunder be delivered to the undersigned.

_____
(Name of Registered Owner)

_____
(Signature of Registered Owner)

_____
(Street Address)

_____
(City) (State) (Zip Code)

Notice: The signature on this subscription must correspond with the name as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under this Warrant, with respect to the number of shares of Common Stock set forth below:

Name and Address of Assignee	No. of Shares ofCommon Stock

and does hereby irrevocably constitute and appoint

_____

attorney-in-fact to register such transfer on the books of Energy Focus, Inc. maintained for the purpose, with full power of substitution in the premises.

Dated: _____

_____
(Name of Registered Owner)

_____
(Signature of Registered Owner)

Notice: The signature on this assignment must correspond with the name as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT 4.11

Final Form of Warrant

THIS COMMON STOCK PURCHASE WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED IN VIOLATION OF SUCH ACT, THE RULES AND REGULATIONS THEREUNDER OR THE PROVISIONS OF THIS COMMON STOCK PURCHASE WARRANT.

Number of Shares of Common Stock: [_____]

Warrant No. _____

COMMON STOCK PURCHASE WARRANT

To Purchase Common Stock of
ENERGY FOCUS, INC.

THIS IS TO CERTIFY THAT [_____], or registered assign (the "Holder"), is entitled, at any time from the Issuance Date (as hereinafter defined) to the Expiration Date (as hereinafter defined) to purchase from Energy Focus, Inc., a Delaware corporation (the "**Company**"), [___(___)] shares of Common Stock (as hereinafter defined and subject to adjustment as provided herein), in whole or in part, including fractional parts, at a purchase price of equal to $0.01 (subject to adjustment as provided herein, the "**Exercise Price**"), all on the terms and conditions and pursuant to the provisions hereinafter set forth.

This Warrant is issued pursuant to, and the Holder is entitled to the benefits of, that certain Warrant Acquisition Agreement dated as of March 30, 2010 by and between the Company and the investor party thereto (the "**Warrant Acquisition Agreement**"). Capitalized terms used herein without definition are used with the definitions assigned thereto in such Warrant Acquisition Agreement.

1. DEFINITIONS

As used in this Common Stock Purchase Warrant (this "**Warrant**"), the following terms shall have the respective meanings set forth below:

"**Business Day**" shall mean any day that is not a Saturday or Sunday or a day on which banks in New York City, New York are required or permitted to be closed in the City of New York.

"**Issuance Date**" shall mean March 30, 2010.

"**Commission**" shall mean the Securities and Exchange Commission or any other federal agency then administering the Securities Act and other federal securities laws.

"**Common Stock**" shall mean (except where the context otherwise indicates) the Common Stock, par value $0.0001 per share, of the Company as constituted on the Issuance Date, and any capital stock into which such Common Stock may thereafter be changed, and shall also include (i) capital stock of the Company of any other class (regardless of how denominated) issued to the holders of shares of Common Stock upon any reclassification thereof which is also not preferred as to dividends or assets over any other class of stock of the Company and which is not subject to redemption and (ii) shares of common stock of any successor or acquiring Company received by or distributed to the holders of Common Stock of the Company in the circumstances contemplated by Section 4.5.

"**Convertible Securities**" shall mean options, evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable, with or without payment of additional consideration in cash or property, for shares of Common Stock, either immediately or upon the occurrence of a specified date or a specified event.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

"**Exercise Period**" shall mean the period during which this Warrant is exercisable pursuant to Section 2.1.

"**Expiration Date**" shall mean the fifth anniversary hereof.

"**Fundamental Corporate Change**" shall have the meaning set forth in Section 4.5.

"**Holder**" shall mean the Person in whose name the Warrant or Warrant Shares set forth herein is registered on the books of the Company maintained for such purpose.

"**Market Price**" shall mean, on any date of determination, (i) the closing price of a share of Common Stock on such day as reported on the principal Trading Market on which the Common Stock is listed or traded, or (ii) if the Common Stock is not listed on a Trading Market, the closing bid price for a share of Common Stock on such day in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then listed or quoted on the OTC Bulletin Board, the closing bid price for a share of Common Stock on such day in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices).

"**Other Property**" shall have the meaning set forth in Section 4.5.

"**Person**" shall mean any individual, sole proprietorship, partnership, joint venture, trust, incorporated organization, association, Company, institution, public benefit Company, entity or government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

"**Securities Act**" shall mean the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Trading Day" means (i) a day on which the Common Stock is traded on a Trading Market, or (ii) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then quoted on the OTC Bulletin Board, a day on which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices); *provided*, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then the term "Trading Day" shall mean a Business Day.

"Trading Market" means whichever of the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, or the Nasdaq Bulletin Board on which the Common Stock is listed or quoted for trading on the date in question.

"**Transfer**" shall mean any disposition of any Warrant or Warrant Shares or of any interest in either thereof, which would constitute a sale thereof within the meaning of the Securities Act.

"**Warrant Shares**" shall mean the shares of Common Stock issued or issuable to the Holder of this Warrant upon the exercise thereof.

"**Warrants**" shall mean this Warrant and all warrants issued upon transfer, division or combination of, or in substitution for, any thereof. All Warrants shall at all times be identical as to terms and conditions and date, except as to the number of shares of Common Stock for which they may be exercised.

2. EXERCISE OF WARRANT

2.1 Manner of Exercise

From the Issuance Date and until 5:00 p.m., Eastern Standard Time, on the Expiration Date, the Holder may exercise this Warrant, on any Business Day, for all or any part of the number of shares of Common Stock purchasable hereunder, subject to the further restriction in the next paragraph.

In order to exercise this Warrant, in whole or in part, the Holder shall surrender this Warrant to the Company at its principal office at 32000 Aurora Road, Solon, Ohio 44139, or at the office or agency designated by the Company pursuant to Section 12, together with a written notice of the Holder's election to exercise this Warrant, which notice shall specify the number of shares of Common Stock to be purchased, and shall be accompanied by payment of the Exercise Price in cash or wire transfer or cashier's check drawn on a United States bank. Such notice shall be substantially in the form of the subscription form appearing at the end of this Warrant as Exhibit A, duly executed by the Holder or his agent or attorney. Upon receipt of the items referred to above, the Company shall, as promptly as practicable, execute or cause to

be executed and deliver or cause to be delivered to the Holder a certificate or certificates representing the aggregate number of full shares of Common Stock issuable upon such exercise, together with cash in lieu of any fraction of a share, as hereinafter provided. The stock certificate or certificates so delivered shall be, to the extent possible, in such denomination or denominations as the Holder shall request in the notice and shall be registered in the name of the Holder or, subject to Section 9, such other name as shall be designated in the notice. This Warrant shall be deemed to have been exercised and such certificate or certificates shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become the holder of record of such shares for all purposes, as of the date the notice, together with the cash or check or wire transfer of funds and this Warrant is received by the Company as described above and all taxes required to be paid by the Holder, if any, pursuant to Section 2.2 prior to the issuance of such shares have been paid, provided that if the Warrant is exercised in connection with a merger, reorganization or other Fundamental Corporate Change, such exercise may be made conditional upon the consummation of such event. If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased shares of Common Stock called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant, or, at the request of the Holder, appropriate notation may be made on this Warrant and the same returned to the Holder. Notwithstanding any provision herein to the contrary, the Company shall not be required to register shares in the name of any Person who acquired this Warrant (or part hereof) or any Warrant Shares otherwise than in accordance with this Warrant.

2.2 Payment of Taxes and Charges

All shares of Common Stock issuable upon the exercise of this Warrant pursuant to the terms hereof shall be validly issued, fully paid and nonassessable, freely tradable and without any preemptive rights. The Company shall pay all expenses in connection with, and all taxes and other governmental charges that may be imposed with respect to, the issuance or delivery thereof, unless such tax or charge is a tax on income imposed by law upon the Holder in connection with the issuance of the Common Stock to a person other than the Holder, in which case such taxes or charges shall be paid by the Holder.

2.3 Fractional Shares

The Company shall not be required to issue a fractional share of Common Stock upon exercise of any Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the Market Price per share of Common Stock as of the date of exercise of the Warrant giving rise to such fraction of a share.

2.4 Cashless Exercise During Event

Notwithstanding any other provision contained herein to the contrary, from and after the six-month anniversary of the Closing Date, whenever an Event has occurred and is continuing and at any time after the expiration of the Effectiveness Period, the Holder may elect to receive, without the payment by the Holder of the aggregate Exercise Price in respect of the

shares of Common Stock to be acquired, shares of Common Stock of equal value to the value of this Warrant, or any specified portion hereof, by the surrender of this Warrant (or such portion of this Warrant being so exercised) together with a subscription form in the form attached hereto as Exhibit A, with appropriate modification to reflect such cashless exercise, duly executed, to the Company. Thereupon, the Company shall issue to the Holder such number of fully paid, validly issued and nonassessable shares of Common Stock as is computed using the following formula:

$$X = \frac{Y\ (A - B)}{A}$$

where

X = the number of shares of Common Stock to which the Holder is entitled upon such cashless exercise;

Y = the total number of shares of Common Stock covered by this Warrant for which the Holder has surrendered purchase rights at such time for cashless exercise (including both shares to be issued to the Holder and shares as to which the purchase rights are to be canceled as payment therefor);

A = the Market Price of one share of Common Stock as at the date the net issue election is made; and

B = the Warrant Price in effect under this Warrant at the time the net issue election is made.

2.5 Buy-In

If at any time when a Registration Statement is in effect or required to be in effect with respect to the Warrant Shares, as provided for by the Securities Purchase Agreement, (a) a certificate representing the Warrant Shares is not delivered to the Holder within three (3) Business Days of the due exercise of this Warrant by the Holder and (b) prior to the time such certificate is received by the Holder, the Holder, or any third party on behalf of the Holder or for the Holder's account, purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of shares represented by such certificate (a **"Buy-In"**), then the Company shall pay in cash to the Holder (for costs incurred either directly by such Holder or on behalf of a third party) the amount by which the total purchase price paid for Common Stock as a result of the Buy-In (including brokerage commissions, if any) exceeds the proceeds received by such Holder as a result of the sale to which such Buy-In relates. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In.

3. TRANSFER, DIVISION AND COMBINATION

3.1 Transfer

Subject to compliance with Section 9, transfer of this Warrant and all rights hereunder, in whole or in part, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant at the principal office of the Company referred to in Section 2.1 or the office or agency designated by the Company pursuant to Section 12, together with a written assignment of this Warrant substantially in the form of Exhibit B hereto duly executed by the Holder or his agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall, subject to Section 9, execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be canceled. A Warrant, if properly assigned in compliance with Section 9, may be exercised by a new Holder for the purchase of shares of Common Stock without having a new warrant issued.

3.2 Division and Combination

Subject to Section 9, this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office or agency of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or his agent or attorney. Subject to compliance with Sections 3.1 and 9, as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice.

3.3 Expenses

The Company shall prepare, issue and deliver at its own expense (other than transfer taxes) the new Warrant or Warrants under this Section 3.

3.4 Maintenance of Books

The Company agrees to maintain, at its aforesaid office or agency, books for the registration and the registration of transfers of the Warrants.

4. ADJUSTMENTS

The number of shares of Common Stock for which this Warrant is exercisable, or the price at which such shares may be purchased upon exercise of this Warrant, shall be subject to adjustment from time to time as set forth in this Section 4. The Company shall give the Holder notice of any event described below which requires an adjustment pursuant to this Section 4 at the time of such event.

4.1 Stock Dividends, Subdivisions and Combinations

If at any time the Company shall:

(a) declare or pay to the holders of its Common Stock a dividend payable in, or other distribution of, shares of Common Stock or in Convertible Securities;

(b) subdivide its outstanding shares of Common Stock into a larger number of shares of Common Stock; or

(c) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock;

then (i) the number of shares of Common Stock for which this Warrant is exercisable immediately after the occurrence of any such event shall be adjusted to equal the number of shares of Common Stock which a record holder of the same number of shares of Common Stock for which this Warrant is exercisable immediately prior to the occurrence of such event would own or be entitled to receive after the occurrence of such event, and (ii) the then-current Exercise Price shall be adjusted to equal (A) the then-current Exercise Price multiplied by the number of shares of Common Stock for which this Warrant is exercisable immediately prior to the adjustment divided by (B) the number of shares for which this Warrant is exercisable immediately after such adjustment.

4.2 Certain Other Distributions

If at any time the Company shall declare or pay to the holders of its Common Stock any dividend or other distribution of:

(a) cash;

(b) any evidences of its indebtedness, any shares of its stock or any other securities or property of any nature whatsoever (other than cash, Convertible Securities or additional shares of Common Stock); any warrants or other rights to subscribe for or purchase any evidences of its indebtedness, any shares of its stock or any other securities or property of any nature whatsoever (other than cash, Convertible Securities or additional shares of Common Stock);

then, upon exercise of this Warrant, the Holder shall be entitled to receive such dividend or distribution as if the Holder had exercised this Warrant prior to the date of such dividend or distribution. A reclassification of the Common Stock (other than a change in par value, or from par value to no par value or from no par value to par value) into shares of Common Stock and shares of any other class of stock shall be deemed a distribution by the Company to the holders of its Common Stock of such shares of such other class of stock within the meaning of this Section 4.2 and, if the outstanding shares of Common Stock shall be changed into a larger or smaller number of shares of Common Stock as a part of such reclassification, such change shall be deemed a subdivision or combination, as the case may be, of the outstanding shares of Common Stock within the meaning of Section 4.1.

4.3 Dilutive Issuances

If at any time after the Issuance Date the Company shall issue or sell shares of Common Stock or Convertible Securities (other than (i) securities issued or issuable in Excluded Issuances or (ii) shares of Common Stock issued as a result of a dividend or other distribution on the Common Stock payable in Common Stock or (iii) a subdivision of outstanding shares of Common Stock), without consideration or for a consideration per share less than $0.86, the Exercise Price shall be reduced to a price (calculated to the nearest cent) (i) determined in accordance with the following formula:

$$\text{New Exercise Price} = \frac{P1\,(Q1) + P2\,(Q2)}{Q1 + Q2}$$

where:

P1 = Applicable Exercise Price in effect immediately prior to such new issue or sale.

Q1 = Number of shares of Common Stock outstanding plus the number of shares of Common Stock issuable upon conversion or exercise of Convertible Securities outstanding immediately prior to such new issue or sale.

P2 = 100% of the weighted average price per share of Common Stock received or deemed by the Company upon such new issue or sale.

Q2 = Number of shares of Common Stock issued or sold, or deemed to have been issued, in the subject transaction.

For purposes of this Section 4.3, upon the sale or issuance of Convertible Securities, the maximum number of shares of Common Stock issuable upon the exercise, conversion or exchange of such Convertible Securities (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) shall be deemed to be issued as of the time of such issue or sale and the consideration deemed received for such shares of Common Stock shall be the consideration actually received by the Company for the issue of such Convertible Securities plus the minimum additional consideration to be received by the Company upon the full exercise, conversion or exchange of such Convertible Securities. Insofar as any consideration received, or to be received, by the Company consists of property other than cash, such consideration shall be computed at the fair value thereof at the time of such issue or sale, as determined in good faith by the Board.

4.4 Other Provisions Applicable to Adjustments under this Section

The following provisions shall be applicable to the making of adjustments of the number of shares of Common Stock for which this Warrant is exercisable and the current Exercise Price provided for in this Section 4:

(a) **When Adjustments to be Made.** The adjustments required by this Section 4 shall be made whenever and as often as any specified event requiring an adjustment shall occur. For the purpose of any adjustment, any specified event shall be deemed to have occurred at the close of business on the date of its occurrence.

(b) **Fractional Interests.** In computing adjustments under this Section 4, fractional interests in Common Stock shall be taken into account to the nearest 1/10th of a share.

(c) **When Adjustment not Required.** If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or distribution or subscription or purchase rights and shall, thereafter and before the distribution to the holders thereof, legally abandon its plan to pay or deliver such dividend, distribution, subscription or purchase rights, then thereafter no adjustment shall be required by reason of the taking of such record and any such adjustment previously made in respect thereof shall be rescinded and annulled.

4.5 Reorganization, Reclassification, Merger, Consolidation or Disposition of Assets

In case the Company shall reorganize its capital, reclassify its capital stock, consolidate or merge with or into another Person (where the Company is not the survivor or where there is a change in or distribution with respect to the Common Stock of the Company), or sell, convey, transfer or otherwise dispose of all or substantially all its property, assets or business to another Person, or effectuate a transaction or series of related transactions in which more than 50% of the voting power of the Company is disposed of (each, a "**Fundamental Corporate Change**") and, pursuant to the terms of such Fundamental Corporate Change, shares of common stock of the successor or acquiring Company, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring Company ("**Other Property**"), are to be received by or distributed to the holders of Common Stock, then the Holder shall have the right thereafter to receive, upon exercise of the Warrant, such number of shares of common stock of the successor or acquiring Company or of the Company, if it is the surviving Company, and Other Property as is receivable upon or as a result of such Fundamental Corporate Change by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Corporate Change. In case of any such Fundamental Corporate Change, this Warrant shall expire and be of no further force and effect on the closing date of such Fundamental Corporate Change and, in lieu of any other rights of the Holder hereunder, the Holder shall have the right to receive, with within five Business Days of the closing of such Fundamental Corporate Change, cash in an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of such Fundamental Corporate Change. In the event the Company and the Holder are unable to agree on the Black Scholes Value, the parties shall submit the matter to a mutually agreeable accounting firm of regional or national stature for the purpose of making a binding determination of the Black Scholes Value.

4.6 Other Action Affecting Common Stock

In case at any time or from time to time the Company shall take any action in respect of its Common Stock, other than any action described in this Section 4, or any other event occurs, which would have a materially adverse effect upon the rights of the Holder, the number of shares of Common Stock and/or the purchase price thereof shall be adjusted in such

manner as may be equitable in the circumstances, as determined in good faith by the Board of Directors of the Company.

4.7 Nasdaq Limitation; Par Value Limitation

(a) Notwithstanding any other provision in Sections 4.3 or 4.6 to the contrary, if a reduction in the Exercise Price pursuant to Sections 4.3 or 4.6 would require the Company to obtain stockholder approval of the transactions contemplated by the Purchase Agreement pursuant to Nasdaq Rule 5635 and such stockholder approval has not been obtained, (i) the Exercise Price shall be reduced under Section 4.3, or may be reduced under Section 4.6, to the maximum extent that would not require stockholder approval under such Rule, and (ii) the Company shall under Section 4.3, or may under Section 4.6, use its commercially reasonable efforts to obtain such stockholder approval as soon as reasonably practicable, including by calling a special meeting of stockholders to vote on such Exercise Price adjustment. This provision shall not restrict the number of shares of Common Stock which a Warrantholder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Corporate Change.

(b) Notwithstanding anything herein to the contrary, the Company agrees not to enter into any transaction which, by reason of any adjustment hereunder, would cause the Exercise Price to be less than the par value per share of Common Stock**.**

5. NOTICES TO THE HOLDER

5.1 Notice of Adjustments

Whenever the number of shares of Common Stock for which this Warrant is exercisable, or whenever the price at which a share of such Common Stock may be purchased upon exercise of the Warrants, shall be adjusted pursuant to Section 4, the Company shall forthwith prepare a certificate to be executed by the chief financial officer of the Company setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment was calculated (including a description of the basis on which the Board of Directors of the Company determined the fair value of any evidences of indebtedness, shares of stock, other securities or property or warrants or other subscription or purchase rights referred to in Section 4.2), specifying the number of shares of Common Stock for which this Warrant is exercisable and (if such adjustment was made pursuant to Section 4.2 or 4.5) describing the number and kind of any other shares of stock or Other Property for which this Warrant is exercisable, and any change in the purchase price or prices thereof, after giving effect to such adjustment or change. The Company shall promptly cause a signed copy of such certificate to be delivered to the Holder in accordance with Section 14.2. The Company shall keep, along with the transfer register maintained in accordance with Section 3.4, copies of all such certificates and cause the same to be available for inspection at said office during normal business hours by the Holder or any prospective purchaser of a Warrant designated by the Holder.

5.2 Notice of Corporate Action

If at any time:

(a) the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, or any right to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property, or to receive any other right; or

(b) there shall be any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any consolidation or merger of the Company with, or any sale, transfer or other disposition of all or substantially all the property, assets or business of the Company to, another Company; or

(c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of such cases, the Company shall give to Holder (i) at least 10 days' prior written notice of the date on which a record date shall be selected for such dividend, distribution or right or for determining rights to vote in respect of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, and (ii) in the case of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, at least 10 days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause also shall specify (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, the date on which the holders of Common Stock shall be entitled to any such dividend, distribution or right, and the amount and character thereof, and (ii) the date on which any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up is to take place and the time, if any such time is to be fixed, as of which the holders of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up. Each such written notice shall be sufficiently given if addressed to the Holder at the last address of the Holder appearing on the books of the Company and delivered in accordance with Section 14.2.

6. NO IMPAIRMENT

The Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities or other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (c) use its best efforts to obtain all such authorizations, exemptions or consents from any

public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

Upon the request of the Holder, the Company will at any time during the period this Warrant is outstanding acknowledge in writing, in form satisfactory to the Holder, the continuing validity of this Warrant and the obligations of the Company hereunder.

7. RESERVATION AND AUTHORIZATION OF COMMON STOCK

From and after the Issuance Date, the Company shall at all times reserve and keep available for issuance upon the exercise of Warrants such number of its authorized but unissued shares of Common Stock as will be sufficient to permit the exercise in full of all outstanding Warrants. All shares of Common Stock which shall be so issuable, when issued upon exercise of any Warrant and payment therefor in accordance with the terms of such Warrant, shall be duly and validly issued and fully paid and nonassessable and not subject to preemptive rights.

Before taking any action which would cause an adjustment reducing the then-current Exercise Price below the then par value, if any, of the shares of Common Stock issuable upon exercise of the Warrants, the Company shall take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of such Common Stock at such adjusted Exercise Price.

Before taking any action which would result in an adjustment in the number of shares of Common Stock for which this Warrant is exercisable or in the then-current Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

8. TAKING OF RECORD; STOCK AND WARRANT TRANSFER BOOKS

In the case of all dividends or other distributions by the Company to the holders of its Common Stock with respect to which any provision of Section 4 refers to the taking of record of such holders, the Company will in each case take such a record and will take such record as of the close of business on a Business Day. The Company will not at any time, except upon dissolution, liquidation or winding up of the Company, close its stock transfer books or Warrant transfer books so as to result in preventing or delaying the exercise or transfer of any Warrant.

9. RESTRICTIONS ON TRANSFERABILITY

The Warrants and the Warrant Shares shall not be transferred, hypothecated or assigned before satisfaction of the conditions specified in the legend affixed to the first page of this Warrant, which conditions are intended, in part, to ensure compliance with the provisions of the Securities Act with respect to the Transfer of any Warrant or any Warrant Shares. The Holder, by acceptance of this Warrant, agrees to be bound by the provisions of this Section 9.

10. LIMITATIONS ON EXERCISE.

Notwithstanding anything to the contrary contained herein, the number of Warrant Shares that may be acquired by the Warrantholder upon any exercise of this Warrant (or otherwise in respect hereof) shall be limited to the extent necessary to insure that, following such exercise (or other issuance), the total number of shares of Common Stock then beneficially owned by such Warrantholder and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with the Warrantholder's for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), does not exceed 19.9% of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such exercise). For such purposes, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. This provision shall not restrict the number of shares of Common Stock which a Warrantholder may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Corporate Change.

11. LOSS OR MUTILATION

Upon receipt by the Company from the Holder of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of this Warrant and indemnity reasonably satisfactory to it (it being understood that the written agreement of the Holder shall be sufficient indemnity), and in case of mutilation upon surrender and cancellation hereof, the Company will execute and deliver in lieu hereof a new Warrant of like tenor to the Holder; *provided*, in the case of mutilation no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

12. OFFICE OF THE COMPANY

As long as any of the Warrants remain outstanding, the Company shall maintain an office or agency (which may be the principal executive offices of the Company) where the Warrants may be presented for exercise, registration of transfer, division or combination as provided in this Warrant.

13. LIMITATION OF LIABILITY

No provision hereof, in the absence of affirmative action by the Holder to purchase shares of Common Stock, and no enumeration herein of the rights or privileges of the Holder hereof, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company. Nothing in the foregoing shall be construed in any manner to limit or deny the liability of a Holder in any other capacity, including, without limitation, as a director of the Company.

14. MISCELLANEOUS

14.1 Nonwaiver

No course of dealing or any delay or failure to exercise any right hereunder on the part of the Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. No waiver by the Holder of any right hereunder on any one occasion shall operate as a waiver of such right on any other occasion.

14.2 Notice Generally

Except as may be otherwise provided herein, any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the facsimile number specified in this Section prior to 6:30 p.m. eastern time on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Business Day or later than 6:30 p.m. eastern time on any Business Day, (c) the Business Day following the date of transmission, if sent by a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be the same as provided in the Warrant Acquisition Agreement; or such other address as may be designated in writing hereafter, in the same manner, by such addressee.

14.3 Remedies

The Holder in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under Section 2 of this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of Section 2 of this Warrant and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

14.4 Successors and Assigns

Subject to the provisions of Sections 3.1 and 9, this Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant and, with respect to Section 9 hereof, the holders of Warrant Shares, and shall be enforceable by any such holder or the holder of Warrant Shares.

14.5 Amendment

This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

14.6 Severability

Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall only be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant.

14.7 Headings

The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

14.8 Governing Law

This Warrant shall be governed by the laws of the State of Delaware, without regard to the provisions thereof relating to conflicts of law.

14.9 Disputes

In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the securities or other property deliverable upon exercise of this Warrant, the Company shall promptly issue and deliver to the Holder the securities or other properties that are not in dispute.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by the undersigned, thereunto duly authorized, as of the date written below.

Dated: March 30, 2010

ENERGY FOCUS, INC.

By: _____

Name: Nicholas G. Berchtold
Its: Vice President of Finance and
Chief Financial Officer

EXHIBIT A

SUBSCRIPTION FORM

[To be executed only upon exercise of Warrant]

The undersigned registered owner of this Warrant irrevocably exercises this Warrant for the purchase of _____ shares of Common Stock of Energy Focus, Inc. and herewith makes payment therefor, all at the price and on the terms and conditions specified in this Warrant and requests that certificates for the shares of Common Stock hereby purchased (and any securities or other property issuable upon such exercise) be issued in the name of and delivered to

_____

whose address is

_____

and, if such shares of Common Stock shall not include all of the shares of Common Stock issuable as provided in this Warrant, that a new Warrant of like tenor and date for the balance of the shares of Common Stock issuable hereunder be delivered to the undersigned.

_____
(Name of Registered Owner)

_____
(Signature of Registered Owner)

_____
(Street Address)

_____
(City) (State) (Zip Code)

Notice: The signature on this subscription must correspond with the name as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under this Warrant, with respect to the number of shares of Common Stock set forth below:

Name and Address of Assignee	No. of Shares of Common Stock

and does hereby irrevocably constitute and appoint

_____

attorney-in-fact to register such transfer on the books of Energy Focus, Inc. maintained for the purpose, with full power of substitution in the premises.

Dated: _____

_____
(Name of Registered Owner)

_____
(Signature of Registered Owner)

Notice: The signature on this assignment must correspond with the name as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatsoever.

Execution copy

MEMBER INTEREST PURCHASE AGREEMENT

December 29, 2009

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MEMBER INTEREST PURCHASE AGREEMENT

This Member Interest Purchase Agreement ("Agreement") is entered into as of December 29, 2009, by and among Energy Focus, Inc., a Delaware corporation ("Buyer"), Stones River Companies, LLC, a Tennessee limited liability company ("Company"), TLC Investments, LLC, a Tennessee limited liability company ("TLC"), and Jami Hall and Robert E. Wilson, Tennessee residents (TLC, Ms. Hall, and Mr. Wilson collectively, the "Sellers").

RECITALS

WHEREAS, TLC is the sole owner of all of the member interests of the Company (the "Units") and Ms. Hall and Mr. Wilson are the sole owners of all of the member interests of TLC; and

WHEREAS, upon the terms and subject to the conditions hereinafter set forth, Sellers desire to sell, and Buyer desires to purchase, the Units, subject to the terms and conditions set forth herein, so that on and after the Closing Date, as defined in Section 2.1, the Buyer can acquire the Assets of the Company and operate its Business, as defined in Appendix A.

NOW, THEREFORE, in consideration of the premises, and the mutual representations, warranties, covenants and agreements hereinafter set forth, and each intending to be legally bound hereby, the parties agree as follows:

ARTICLE I

PURCHASE AND SALE OF UNITS

Section 1.1 Units; Excluded Assets; Excluded Liabilities.

1.1.1 Purchase of Units. Subject to the terms and conditions of this Agreement, Sellers shall sell, assign, transfer and deliver to Buyer at the Closing, and Buyer shall purchase from Sellers at the Closing, the Units, free and clear of all liens, encumbrances, and restrictions of any kind, in exchange for the purchase price, as described in Article II below.

1.1.2 Excluded Assets. Sellers shall not sell, and Company shall not retain after the Closing, the assets of the Company set forth on Schedule 1.1 (the "Excluded Assets"). Prior to or after the Closing, the Company shall transfer or distribute the Excluded Assets to the Sellers as the parties shall agree.

1.1.3 Excluded Liabilities. As of and after the Closing, the Company shall not be responsible for the liabilities of the Company set forth on Schedule 1.1 (the "Excluded Liabilities"), and Sellers shall assume, perform, and in due course discharge the Excluded Liabilities, and indemnify and hold harmless the Company and the Buyer from and against those Liabilities, according to the terms of Section 8.2. As of the Closing, the Assets of the Company

being retained by it shall be free and clear of all liens, mortgages, encumbrances, and restrictions.

Section 1.2 Transfer of Units. At the Closing, title to all of the Units shall pass to Buyer. Sellers shall present to Buyer: (i) certificate(s) representing the Units, duly endorsed, with powers of attorney duly executed in blank, with all transfer taxes, if any, paid in full, and/or a separate assignment of the Units, duly endorsed; (ii) the minute book(s), unit ledgers and seal of Company; and (iii) such other instruments of title which are reasonably appropriate to convey and assign all of the Units to Buyer. From and after the Closing, Sellers and Buyer shall cooperate to execute, deliver and record such instruments of title and other documents reasonably requested by the other part(ies) in order to more fully perfect Buyer's right, title and interest in and to the Units, and to more fully perfect the security interests and pledge granted and conveyed from Buyer and Company to Sellers.

Section 1.3 Assignment of Contracts and Rights. Anything to the contrary notwithstanding, this Agreement shall not operate to assign any Contract or any other Asset or any claim, right or benefit arising thereunder or resulting therefrom, if an attempted assignment thereof as part of the sale and purchase of the Units, without the consent of a third party thereto (including a government or governmental unit), would constitute a breach, default or other contravention thereof or in any way adversely affect the rights of Company, Sellers, or Buyer thereunder. Company, Sellers, and Buyer shall each use their reasonable best efforts to obtain the consent of such third parties for the assignment hereof prior to Closing, and if such consent is not obtained by Closing or if such attempted assignment thereof would not assign all of the rights thereunder at Closing, then Company, Sellers, and Buyer, shall continue to cooperate and use their reasonable best efforts to obtain an assignment of all of such rights thereunder. To the extent that the consents and waivers referred to herein are not obtained, or until the impediments to the sale, assignment, transfer, delivery or sublease referred to therein are resolved, Sellers and Company shall use their reasonable best efforts to: (i) provide, at the request of Buyer, to Buyer the benefits of any such Asset referred to herein, (ii) cooperate in any lawful arrangement designed to provide such benefits to Buyer, and (iii) enforce, at the request of and for the account of Buyer, any rights of Sellers or Company arising from any Asset referred to herein against any third person (including a government or governmental unit) including the right to elect to terminate in accordance with the terms thereof upon the advice of Buyer. Buyer shall not be required by this Section 1.3 to enter into any arrangement that would impose any additional cost, expense or liability or that would deprive Buyer of any material benefits or profits. Nothing herein shall affect the conditions to Buyer's obligations set forth in Article VI herein.

Section 1.4 Survival of Quotations. For all Contracts, proposals, bids, and the like listed on Schedule A-8, Sellers shall provide to Buyer copies of all quotations for the provision of goods and services submitted by their Affiliates. Sellers shall cause those Affiliates to honor those quotations and, if requested by Buyer, shall provide written confirmations from the Affiliates.

ARTICLE II

CLOSING; PURCHASE PRICE; OTHER CONSIDERATION

Section 2.1 Closing. Subject to Section 9.1.3, the Closing ("Closing") of the sale and purchase of the Units and the consummation of the other transactions contemplated herein, shall take place as of December 31, 2009 (the "Closing Date").

Section 2.2. Cash Purchase Price. On the Closing Date, Buyer shall deliver to Sellers by wire transfer in immediately available funds or by certified check the amount of One Million Five Hundred Thousand Dollars ($1,500,000.00) (the "Cash Purchase Price").

Section 2.3 Earn-Out.

(a) Buyer shall deliver to Sellers a quarterly payment equal to the product obtained by multiplying (i) the Gross Revenue from the Business of the Company during the previous quarter by (ii) 0.025 (the "Earn-Out"). Gross Revenue is defined as total invoice price less tax and freight on materials-only sales, if listed as separate line items, and inclusive of properly executed change orders. Gross Revenue from a project shall include all material, labor and professional services revenue associated with a contract recorded by the Company.

(b) The Earn-Out shall be paid to Sellers over a period of forty-two (42) months following the Closing Date. The Earn-Out shall be paid to Sellers within forty-five (45) days after the end of each calendar quarter, from the quarter ending December 31, 2009 through the quarter ending June 30, 2013 (the "Earn-Out Period"). Buyer shall not be deemed to be in default under this Section 2.3 unless and until it has failed to make full payment following written notice from Sellers to Buyer and 45-days opportunity to cure the failure to make timely payment.

(c) With respect to any project listed on Schedule A-8 and on which Sellers or any of their Affiliates have accrued but unreimbursed engineering expenses, Sellers shall be deemed to have earned engineering fees at 2.5% of the job's unearned gross revenue. The fees shall be treated as a job-related cost entitled to mechanics' and/or other lien rights as security for payment. The payment in full of the Earn-Out related to the project shall be deemed full payment of the engineering fees and expenses.

Section 2.4 Convertible Promissory Note. On the Closing Date, Buyer shall deliver to Sellers a convertible promissory note in the principal face amount of $500,000.00 (the "Promissory Note")**.** The Promissory Note shall bear interest at the compound rate equal to the "Wall Street Journal Prime Rate" in effect from time to time as and when announced and reported in the Journal and at www.bankrate.com plus two percent (2%). The Promissory Note, including all interest and other payments that may be due thereunder, shall be due and payable without demand immediately upon the earlier of (i) June 30, 2013 and/or (ii) the filing of any proceeding for bankruptcy, receivership and/or insolvency of Buyer and/or Company (the "Maturity Date"). Sellers shall have the right to convert the entire principal face amount of the Promissory Note, in whole but not in part, into 500,000 shares of Common Stock of Buyer

during the period beginning on June 30, 2010 and ending on the Maturity Date. In the event of a conversion by Sellers, any and all accrued interest and other costs shall be immediately due and payable in cash. Buyer shall pay to Sellers a fee of $500,000.00 if Buyer's Common Stock has not performed as set forth in the Note.

Section 2.5 Security Agreement. The obligations of Buyer under the Promissory Note and under this Agreement shall be secured by a first-lien-position security interest in all Assets and all other assets of Company pursuant to a security agreement among Sellers, Buyer, and Company ("Security Agreement").

Section 2.6 Unit Pledge Agreement. The obligations of Buyer under the Promissory Note and under this Agreement shall be secured by a first-lien-position security interest in and pledge of all of the Units (including but not limited to any options, warrants or other contracts for issuance of units) pursuant to a unit pledge agreement among Sellers, Buyer, and Company ("Unit Pledge Agreement").

Section 2.7 Buyer Financial Termination Provision. The Security Agreement and the Unit Pledge Agreement shall provide that the Sellers, in addition to the ability to exercise any and all remedies available at law or in equity, shall have the right to terminate this Agreement before June 30, 2013 if Buyer and/or Company files, or is placed into, bankruptcy, receivership, or any other form of reorganization or restructuring for the benefit of creditors, and that filing is not discharged within sixty (60) days.

Section 2.8 Listing of Common Stock. Buyer shall use its best efforts to maintain the listing of its common stock for trading on the NASDAQ Global Market. In the event that its common stock should cease to be listed on that Market, Buyer shall use its best efforts to promptly list its common stock on a nationally recognized stock exchange, automated quotation system, or over-the-counter market. Buyer shall not be deemed to be in default under this Section 2.8 unless and until its common stock has failed to be listed on a nationally recognized stock exchange, automated quotation system, or over-the-counter market for a period of at least ninety (90) days.

Section 2.9 Bonding Capacity. On and after the Closing Date, Buyer or Company shall demonstrate its ability to procure and maintain performance and payment bonding sufficient for the amount and timing of the projects in its proposal "pipeline" by providing a reasonably satisfactory Line of Authorization or other evidence of bonding capacity reasonably satisfactory to Sellers.

Section 2.10 Step-In Rights. In the event that Buyer or Company does not pursue specific projects due to bonding considerations, in addition to the ability to exercise any and all remedies available at law or in equity, Sellers shall have "step-in" rights to assume and perform projects independent from Buyer and Company. Sellers can pursue any other projects that Buyer or Company decline in writing.

Section 2.11 Rent. For a period of one year following the Closing Date, Sellers shall provide Company with lighted, heated, and air conditioned office space at Sellers' premises

located at 1244 Gallatin Pike, Madison, Tennessee, or at such other location(s) as Sellers shall operate their business activities, to conduct the Business being acquired by Buyer at no additional cost to Buyer or Company pursuant to a rent agreement (the "Rent Agreement").

Section 2.12 Post-Closing Operations Agreement. At the Closing the parties shall enter into a transition and post-closing operations agreement (the "Post-Closing Operations Agreement").

Section 2.13 Management Fee. Buyer shall cause Company to deliver to TLC a management fee of $1,232,000.00, without set-off, paid in equal monthly installments at the end of each month beginning January 31, 2010 and ending December 31, 2010, for overhead expenses to TLC in support of up to $20,000,000.00 in Company project revenues in 2010 for those projects on which TLC provides installation support services. Buyer shall cause Company to deliver an additional eight percent (8%) management fee on Company project revenues above $20,000,000.00 in fiscal year 2010 for those projects on which TLC provides installation support services. "Project revenues" shall have the same meaning as "Gross Revenue" in Section 2.3(a).

Section 2.14 Shares of Common Stock. At the Closing Buyer shall issue to Sellers 1,000,000 shares of its Common Stock (the "Shares"). The Shares shall be entitled to the same registration rights as the conversion shares covered by the Convertible Promissory Note. If required by Sellers in writing on or before June 30, 2010, Buyer shall facilitate the sale of the Shares at a guaranteed price of at least $1.00 per Share as soon as possible after written notice from the Sellers. If Buyer has not received a written notice from Sellers by July 1, 2010, the guarantee shall expire.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLERS AND COMPANY

Each of Sellers hereby represents and warrants to Buyer as of the date hereof and, if different, as of the Closing Date, except as set forth on Disclosure Schedule 3.0, as follows:

Section 3.1 Organization. Each of Company and TLC is a limited liability company duly established, validly existing and in good standing under the laws of the State of Tennessee and has the requisite company power and authority to own, use, operate or lease all of its property and assets, and to carry on its business as it is now being conducted, in all material respects. Company has no subsidiaries and does not have any ownership interests in any other Person. "Person" means an individual, a partnership, a corporation, a limited liability company and association, a joint stock company, a trust, a joint venture, any other legal entity, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof) and the term "Other Agreement" with respect to any party shall mean the other agreements and documents contemplated hereby to be executed and delivered by such party or any Affiliate thereof on or before the Closing.

Section 3.2 Qualification of Company. Company is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the Business or the nature of its activities makes such qualification or license necessary.

Section 3.3 Authorization.

3.3.1 Authority. Sellers and Company have all requisite power and legal authority to enter into and perform this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Sellers and Company and constitutes, and each Other Agreement which is to be executed and delivered by Sellers and Company, when executed and delivered by each of them, shall constitute, the legal, valid and binding obligation of them, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws relating to or affecting the rights and remedies of creditors generally and by general principles of equity including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies, regardless of whether enforceability is considered in a proceeding in equity or at law.

3.3.2 No Breach or Violation. Execution, delivery and performance of this Agreement by Sellers and Company and consummation of the transaction contemplated hereby will not lead to or cause a violation, breach, or default or result in the termination of, or accelerate the performance required by, or result in the creation or imposition of any Encumbrance (as defined in Section 3.5.), whether by notice or lapse of time or both, or otherwise conflict with any term or provision of the following:

(a) Sellers' or Company's articles of organization or operating agreement, as amended;

(b) As of the Closing, any note, bond, mortgage, contract, indenture or agreement to lease, license or other instrument or obligation to which Sellers and/or Company is a party or is bound (as pertains to Company's Business): (i) where such violation, breach or default would have a material adverse effect on the Units, the operation of the Business or the financial condition of Sellers or Company; or (ii) except as to which required consents, amendments or waivers shall have been obtained by Sellers or Company prior to the Closing for any such violation, breach or default; or

(c) Any court or administrative order, writ or injunction or process, or any permit, license, or consent decree to which Sellers or Company is a party or is bound.

Section 3.4 Financial Statements.

3.4.1 Statements. The Sellers have previously delivered to Buyer (a) the reviewed balance sheets, income statements and retained earnings and statements of cash flows for Company, together with the accompanying footnotes, for the six (6) month period ("Reviewed Annual Statement") ended December, 2008 and (b) unaudited balance sheets,

income statements and retained earnings and statements of cash flows for Company, together with the accompanying footnotes, for the nine month period ending September 30, 2009 (the balance sheet as of September 30, 2009 is sometimes referred to herein as the ("Interim Balance Sheet") which have been provided in electronic format as Account's copy of Quickbooks accounting records (all of the foregoing referred to herein collectively as the "Company Financial Statements"). The Company Financial Statements have been prepared in accordance with GAAP on a consistent basis throughout the indicated periods (except for changes required as a result of changes in GAAP and, with respect to the Interim Financial Statements, the absence of notes and for normal year-end adjustments) and fairly present in all material respects the financial condition, assets and liabilities and results of operations and cash flows of Sellers in accordance with GAAP at the dates and for the periods indicated.

3.4.2 Accuracy. The Company Financial Statements, and each of them, fairly present the results of operations, financial position and cash flows of for and as of the date or period covered thereby. Subject to normal year-end adjustments, the Company Financial Statements were prepared in accordance with the tax accounting rules and regulations as adopted from time to time by the Internal Revenue Service under the Internal Revenue Code of 1986, as amended (the "Tax Convention") applied on a basis consistent with principles applied by Company in prior years, and in accordance with the books of account of Company, which have been maintained in all respects in accordance with sound business practices, and reflect all transactions involving Sellers and set forth therein are, in all materials respects, true and correct.

3.4.3 No Undisclosed Liabilities. Company has no liabilities or obligations of any nature, secured or unsecured, known or unknown, due or to become due, asserted or unasserted, absolute, accrued, or unaccrued, liquidated or unliquidated, contingent, executory or otherwise, of a nature required to be reflected in a balance sheet prepared in accordance with Tax Convention, which were not adequately and completely disclosed and reserved for in the Company Financial Statements, except for those liabilities and obligations which were incurred since the Financial Date in the ordinary course of business and which have been disclosed in writing in Schedule 3.0 to Buyer.

3.4.4 Absences of Changes. Other than as set forth in Schedule 3.0 delivered hereunder, since the Financial Date there has not been and, as of the Closing Date, there shall not be:

(a) Any material adverse change in the Assets, the Business, or the financial condition of Company;

(b) Any material change in the contingent obligations or liabilities of Company which relate to Company by way of guaranty, documentary credit, standby credit, endorsement, indemnity, warranty or otherwise;

(c) Any material waiver or cancellation by Company of rights or of debts owed to Company;

(d) Any amendment to any agreement, commitment, or transaction (including without limitation any borrowing, lease, capital expenditure or capital financing, but excluding

change orders and other contract amendments in the ordinary course of Company's business) by Company, material to the Business, the Assets, or Company or which, if such action were taken on the date hereof, would require disclosure pursuant to this Agreement, or

(e) Any material change by Company is its accounting methods or practices, assumptions or methods of calculating, or any change by Company in its accounting principles, relating to the Business.

3.4.5 Discharge of Liabilities. Other than as set forth in Schedule 3.0 delivered hereunder, since the Financial Date and as of the Closing Date: (i) Company has not paid, discharged or satisfied any claims, liabilities or obligations (absolute, accrued, contingent or otherwise) other than the payment, discharge, or satisfaction in the ordinary course of business and consistent with past practice; and (ii) Company has not terminated, amended or suffered the termination or amendment of, or failed to perform all of its obligations under, any of the Contracts or any agreement, contract, lease or license affecting the Business.

Section 3.5 Assets.

3.5.1 Title. Company has good, valid and marketable title to all of the Assets. The title to each Asset is free and clear of all title defects, objections, liens, mortgages, security interests, pledges, charges and encumbrances, adverse claims, equities, or any other rights of others or other adverse interests of any kind including without limitation, licenses, escrow arrangements, leases, chattel mortgages, conditional sales contracts, collateral security arrangements and other title or interest retention arrangements (each an "Encumbrance" and collectively the "Encumbrances").

3.5.2 Condition. All tangible Assets have no material defects, and are in good operating condition and repair and are adequate for the uses to which they are put in the Company.

Section 3.6 Equipment. There exists no condition which interferes with the economic value of any item of Equipment, except as disclosed on Disclosure Schedule 3.0.

Section 3.7 Intellectual Property.

3.7.1 Except as set forth in Disclosure Schedule 3.0, Seller has good, sole and marketable title to all such Intellectual Property, free and clear of any Encumbrances and Sellers are not aware of any claims that any rights or interest of Company in the Intellectual Property is being challenged in any way.

3.7.2 Except as set forth in Disclosure Schedule 3.0:

(a) Company has no patents or inventions, domestic or foreign, or pending applications for patents on inventions, and no copyrights, registrations or pending application for registration of copyrights;

(b) No Person has any right of renewal, reversion, or termination with respect to any copyrights owned by Seller or any rights under such copyrights;

(c) Company has no registered trademarks, trade names, service marks or pending applications to register trademarks, trade names, or service marks, related to any products or services sold or licensed by it or which it otherwise uses in the conduct of its business;

(d) Company does not own any patents or applications for patents that relate to or affect the products or services sold or licensed to customers by Company or any Intellectual Property owned by Company; and

(e) There are, and have been, no options, licenses or agreements of any kind relating to any of the Intellectual Property owned by Company or to the use; manufacture, sale or other exploitation of products or services based on or embodied in such Intellectual Property.

3.7.3 Company and Sellers acknowledge that Company has not maintained a trade secrets policy, that there is no Intellectual Property owned by Seller that requires such a policy, and that the failure to have such a policy has not had a material adverse effect on the Business.

3.7.4. Company has not infringed or misappropriated, and is not infringing or misappropriating any Intellectual Property of another Person and there is no claim pending, or to the knowledge of Company, threatened, against Company with respect to any alleged infringement or misappropriation of any Intellectual Property owned by another Person. Sellers have no knowledge that any Person is infringing or misappropriating any Intellectual Property of Company.

3.8 Contracts and Obligations:

3.8.1 Identification. Schedule A-8 delivered hereunder includes an accurate and complete list as of the date hereof and as of the Closing Date, of the Contracts and identifies each Contract by the parties thereto, the date, and subject matter.

3.8.2 Full Force and Effect. All Contracts are valid and binding upon Company and, to the best knowledge and belief of Sellers, are valid and binding on the each other party thereto.

3.8.3 No Default. With respect to each of the Contracts, neither Company nor, to the best knowledge and belief of Sellers, any other party thereto is in material breach thereof or material default thereunder, and there does not exist any event, condition or omission which would constitute such material breach or material default (whether by lapse of time or notice or both), except for such breaches, defaults and events as to which requisite waivers or consents have been obtained.

3.8.4 Copies. Sellers have delivered to Buyer a correct and complete copy of each written Contract and a written summary setting forth the terms and conditions of each oral contract.

3.8.5 Renegotiation. There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to Company under current or completed contracts with any person or entity having the contractual or statutory right to amend or require such renegotiation and no such person or entity has made written demand for such negotiation, excepting any change orders that are or would be issued in the ordinary course of business with respect to the Contracts.

3.8.6 Sufficiency of Contract. To the best knowledge and belief of Sellers, the Contracts are of sufficient nature, condition and quantity to permit Buyer to operate the Business immediately upon the Closing in the ordinary course of business and consistent with the past practices of Company; provided however that Sellers make no representation or warranty regarding cash flow, profitability, Buyer's capacity to bond or any other financial aspect of the Business after the Closing.

Section 3.9 Employees and Labor Matters.

3.9.1 Company has delivered to Buyer, and Buyer has acknowledged the receipt of, a list of (a) all agreements between Company and its employees or other Persons providing services for compensation, and (b) all employees of Company entitled to receive annual compensation in excess of $5,000 and their positions, job categories, and salaries. The transactions contemplated by this Agreement will not result in any liability for severance pay to any employee or other Person, excluding any potential liability for or arising out of a claim for unemployment benefits in the event a Company employee is not immediately employed by Buyer. Company has not informed any employee or other Person that the Person will receive an increase in compensation as a result of the transactions covered by this Agreement, with the exception of employees who have job-related benefits with Company which Buyer does not offer and in those circumstances Company has informed those employees that Buyer has agreed to convert those benefits to an adjustment in paid compensation. All of the employees of Company are "at will" employees and may be terminated by Company at any time, without liability or obligation except the payment of normal compensation accrued up to the time of termination of employment.

3.9.2 Company is in substantial compliance with all applicable federal, state and local laws respecting employment and employment practices, terms and conditions of employment, wages and hours.

3.9.3 There is no strike, labor dispute, slowdown or stoppage actually pending, or to the best knowledge of Seller, threatened, against or directly affecting Company.

3.9.4 There is no pending complaint filed with the National Labor Relations Board or any other governmental agency alleging unfair labor practices, civil rights violations, employment discrimination charges, or the like against Company with respect to the operation of

the Business, and there are no existing facts which would lead to any such unfair labor practice charge.

3.9.5 Company has not entered into any collective bargaining agreements with any party.

Section 3.10 Litigation.

3.10.1 Litigation Pending or Threatened. Except as listed in Schedule 3.0, there are no claims, actions, suits, hearings, arbitrations, disputes, proceedings (public or private) or governmental investigations, pending or threatened, against or affecting Company, the Units, the Assets, or the Business, at law or in equity, before or by any federal, state, municipal or other governmental or nongovernmental department, commission, board, bureau, agency, court or other instrumentality, or by any private person or entity, there is no basis for any such action, suit or proceeding, and there are no existing or threatened, orders, judgments or decrees of any court or governmental agency affecting Company, the Units, the Assets or the Business.

3.10.2 This Transaction. There are no legal, administrative, arbitration or other proceedings or governmental investigations pending or threatened, against or affecting Company, the Units, the Assets or the Business, which seek to enjoin or rescind the transactions contemplated by this Agreement or otherwise prevent Sellers or Company from complying with the terms and provisions of this Agreement.

Section 3.11 Third Party Consent. With the exception of Company's or Sellers' lenders, there are no approvals, authorizations, certificates and consent of any third parties necessary or required to effect the transfer to Buyer of all rights, powers and franchises of Sellers related to Company, the Assets, or the Business, except as listed on Schedule 3.0.

Section 3.12 Permits. There are no approvals, authorizations, certificates, consents, licenses, orders and/or permits of any governmental agencies, whether federal, state or local, necessary to the ownership, use, or operation of Company, the Units, the Assets or the Business, except as set forth on Schedule 3.0 hereto. Sellers will cooperate with Buyer in Buyer's efforts to obtain any such government approvals for a period of three months following Closing.

Section 3.13 Government Contracts Compliance. Company is not in, and consummation of this Agreement and the transactions contemplated hereby will not result in, any violation, breach or default of any term or provision of: (a) any contract, subcontract or agreement between any United States, foreign, state or local governmental or regulatory authority and Seller, or (b) any bid, proposal or quote submitted to any United States, foreign, state or local governmental or regulatory authority by Company.

Section 3.14 Government Authorizations. Execution, delivery and performance of this Agreement by Sellers and/or Company and consummation of the transactions contemplated hereby, will not require any consent, approval, authorization, or permit from, or any filing with or notification to, any United States, foreign, state or local governmental or regulatory authority, except with respect to government entities that are parties to Contracts.

Section 3.15 Taxes. As used in this Agreement, “Taxes” and all derivations thereof means any federal, state, local or foreign income, gross receipts, license, payroll, employment, severance, stamp, occupation, premium, windfall profits, environmental, customs, duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, uses, ad valorem, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto. The term “Tax Returns” shall include all federal, state, local and foreign returns, declarations, statements, reports, schedules, and information returns required to be filed with any taxing authority in connection with any Taxes.

(a) Company has timely filed all Tax Returns and reports required to have been filed by it, and has paid all Taxes due to any taxing authority required to have been paid by it on or prior to the date hereof;

(b) None of such Tax Returns contain, or will contain, a disclosure statement under Section 6662 of the of the Code, or any equivalent or predecessor statute;

(c) Company has not received notice that the Internal Revenue Service or any other taxing authority has asserted or proposed to assert against Seller any deficiency or claim for Taxes and no issue has been raised by any taxing authority in any audit which, by application of similar principles, reasonably could be expected to result in a proposed deficiency of Company for any period not so examined;

(d) There are no pending or, to the knowledge of Sellers or Company, threatened actions, audits, proceedings or investigations with respect to Sellers involving the assessment or collection of Taxes;

(e) There are no liens for Taxes due and payable upon the Assets; and

(f) Sellers and/or Company have not applied for a ruling relating to Taxes from any taxing authority or entered into any closing agreement with any taxing authority.

Sellers will hold harmless and indemnify Buyer and Company from all pre-acquisition tax obligations pursuant to Section 8.2.

Section 3.16 Benefit Plans.

3.16.1 Benefit Plans; Company Plans. Schedule 3.0 identifies the amounts of any discretionary annual contributions that Company has made to any Benefit Plan (or Seller Plan) in respect of each of the last three (3) years or any portion thereof.

3.16.2 Company Group Matters; Funding. Company has no obligation to contribute to, or any direct or indirect liability under or with respect to, any Benefit Plan of the type described in Sections 4063 and 4064 of ERISA or Section 413(c) of the Code. No accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Code) exists nor has any funding waiver from the IRS been received or requested with respect to

any Seller Plan, and no excise or other Tax is due or owing because of any failure to comply with the minimum funding standards of the Code or ERISA with respect to any Company Plan. Company has not at any time since its inception through and including the date hereof been subject to being aggregated with any other corporation under Sections 414(b), (c), (m) or (o) of the Code.

3.16.3 Compliance. Each Company Plan and all related trusts, insurance contracts and funds have been created, maintained, funded and administered in all material respects in compliance with all applicable laws and in compliance with the plan document, trust agreement, insurance policy or other writing creating the same or applicable thereto. To the best knowledge and belief of Sellers, no Company Plan is or is proposed to be under audit or investigation.

3.16.4 Qualified Plans. Schedule 3.0 discloses each Company Plan that purports to be a qualified plan under Section 401(a) of the Code and exempt from United States federal income Tax under Section 501(a) of the Code (a "Qualified Plan"). With respect to each Qualified Plan, a determination letter (or opinion or notification letter, if applicable) covering the Tax Reform Act of 1986 and later Code changes for which the remedial amendment period has not closed has been received from the IRS that such plan is qualified under Section 401(a) of the Code and exempt from federal income Tax under Section 501(a) of the Code. No Qualified Plan has been amended since the date of the most recent such letter. To the best knowledge and belief of Sellers and Company no fiduciary of any Qualified Plan nor any agent thereof has done anything that would adversely affect the qualified status of a Qualified Plan or the qualified status of any related trust.

3.16.5 No Defined Benefit or Multi-employer Plans. Company has not at any time since its inception sponsored or maintained a defined benefit plan within the meaning of Section 3(35) of ERISA.

3.16.6 Prohibited Transactions; Fiduciary Duties; Post-Retirement Benefits. No prohibited transaction (within the meaning of Section 406 of ERISA and Section 4975 of the Code) with respect to any Company Plan exists or has occurred that could subject Company to any liability or Tax under Part 5 of Title I of ERISA or Section 4975 of the Code. Neither Company nor any administrator or fiduciary of any Company Plan, nor any agent of any of the foregoing, has engaged in any transaction or acted or failed to act in a manner that will subject Seller to any liability for a breach of fiduciary or other duty under ERISA or any other applicable law. With the exception of the requirements of Section 4980B of the Code, no post-retirement benefits are provided under any Company Plan that is a welfare benefit plan as described in ERISA Section 3(1).

Section 3.17 Compliance with Environmental Laws.

3.17.1 To the best knowledge and belief of Sellers and Company after investigation, the operation of the Business by Company has been in compliance with the applicable laws and regulations of all federal, state and local government authorities having jurisdiction with respect thereto, including, without limitation, all requirements pursuant to environmental protection, health or safety laws and regulations (including the disposal of hazardous substances and solid wastes).

3.17.2 Company has not undertaken any activity causing (i) the premises to become a hazardous waste treatment, storage or disposal facility within the meaning of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 *et. seq.*, as amended ("RCRA") or any similar federal, state or local laws or regulations, (ii) a release or threatened release of hazardous waste from the Premises within the ambit of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et. seq., as amended (collectively referred to as "CERCLA") or the Toxic Substances Control Act, 15 U.S.C. §2601 et. seq., as amended ("TSCA"), or any similar federal, state or local laws and regulations, or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 et. seq., as amended ("FWPCA"), or the Clean Air Act, 42 U.S.C. §7401, et. seq., as amended ("CAA"), respectively, or any similar federal, state or local laws or regulations.

3.17.3 To the best knowledge and belief of Sellers and Company, no oil, petroleum, chemical liquids, solid, liquid, gaseous products, toxic substances, or any wastes, solid waste, hazardous waste or hazardous substance of any kind, are currently stored or used on the premises and have not been stored or used on the leased premises in the past, and no part of the premises is or has been used as a dump or landfill of any kind except in the ordinary course of Seller's Business. As used herein, the terms "wastes", "solid waste", "hazardous waste", and "hazardous substance" shall have the meanings as such terms are defined in CERCLA, RCRA and in the Ohio Revised Code, as amended, and any regulations now or hereafter promulgated pursuant thereto, and shall also include any sewage or mixture of sewage or other waste material that passes through a sewer system to a treatment facility, any industrial waste-water discharges subject to regulation under FWPCA, and any source material, special nuclear material or byproduct material as defined by the Atomic Energy Act of 1954, 42 U.S.C. §3011 et. seq., as amended.

3.17.4 Neither Company, nor, to the best of its or Sellers' knowledge, any other party, has caused or suffered to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous waste (a "spill"), as those terms are used in Chapter 3745 of the Ohio Revised Code, as amended, at, upon, under, within or emanating from the Premises or any contiguous real estate which has been included in the property description of the Premises within the preceding three years.

3.17.5 Company has not transported any Regulated Material or arranged for the transportation of any Regulated Material to any location that is listed or proposed for listing on the National Priorities List pursuant to CERCLA, on CERCLIS or any other location that is the subject of federal, state or local enforcement action or other investigation that may lead to claims

against Seller for cleanup costs, remedial action, damages to natural resources, to other property or for personal injury including claims under CERCLA. The Premises is not listed or proposed for listing on the National Priorities List pursuant to CERCLA, CERCLIS or any state or local list of sites requiring investigation or cleanup. “Regulated Material” means any hazardous substance as defined by any Environmental Law and any other material regulated by any applicable Environmental Law, including, polychlorinated biphenyls, petroleum, petroleum-related material, crude oil or any fraction thereof. “CERCLIS” means the Comprehensive Environmental Response Compensation Liability Information System List pursuant to CERCLA. “Environmental Law” means any applicable federal, state or local law, in effect as of the Closing Date, relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants, including common law nuisance, property damage and similar common law theories.

3.17.6 Company has not received any request for information, notice of claim, demand or other notification that it is or may be potentially responsible with respect to any investigation, abatement or cleanup of any threatened or actual release of any Regulated Material.

3.17.7 To the best knowledge and belief of Sellers and Company after investigation, Sellers or Company have received all required federal, state, and local licenses, certificates or permits relating to the Business or the premises, and the Business and Company’s facilities, property and equipment are in compliance with the foregoing in all respects.

3.17.8 To the best knowledge and belief of Sellers and Company after investigation, Company has filed all applications, notices and other documents necessary to effect the timely renewal or issuance of all permits necessary under any Environmental Laws for the continued conduct and operation of the Business in the manner now conducted.

3.17.9 To the best knowledge and belief of Sellers and Company after investigation, there are no permits, registrations, licenses and authorizations held by Company in connection with the Business under the Environmental Laws and Sellers and Company knows of no reason why the Business would require them.

3.17.10 Sellers and Company will hold harmless and indemnify Buyer from all pre-acquisition Environmental obligations pursuant to Section 8.2.

Section 3.18 Brokers. No broker or finder has acted for Sellers or Company in connection with this Agreement or the transactions contemplated hereby. Sellers and Company are not obligated to pay any fee or commission to any broker, finder, investment banker or other intermediary in connection with the transactions contemplated by this Agreement.

Section 3.19 Ownership of Company.

3.19.1 Units; Capitalization. There are no Securities Rights with respect to any Units, nor are there any securities convertible into or exchangeable for any Units, or any other Security Rights with respect to any unissued Units. “Securities Right” means any option,

warrant, other right, proxy, put, call, demand, plan, commitment, agreement, understanding, or arrangement of any kind relating to any Units, or any right relating to issuance, sale, assignment, transfer, purchase, redemption, conversion, exchange, registration or voting rights with respect to any Units of the Company, whether issued or unissued, or any other security convertible into or exchangeable for Units of the Company conferred by statute, by the Company's governing documents, or by agreement, including any subscription right, pre-emptive purchase right, or registration right. All of the Units are (a) validly issued, fully paid and nonassessable, (b) were not issued in violation of the terms of any agreement or other understanding of Company, and (c) were issued in compliance with all applicable federal and state securities laws and regulations.

3.19.2. Title to Units. TLC owns all of the Company's Units. Ms. Hall and Mr. Wilson own all of the member interests of TLC.

Section 3.20 Disclosures. To the best knowledge and belief of Sellers and Company after investigation, no statement, representation or warranty made by Sellers or Company in this Agreement, in any Exhibit hereto or Schedule delivered hereunder, or in any certificate, statement, list, schedule or other document furnished or to be furnished to Buyer hereunder, contains any untrue statement of a material fact, or fails to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers, as of the date hereof and, if different, as of the Closing Date, except as set forth on Disclosure Schedule 4.0, as follows:

Section 4.1 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware, and has the requisite power and authority to own, operate or lease the properties that it requires to carry on its businesses in all material respects as such is now being conducted.

Section 4.2 Qualification of Buyer. As of the Closing, Buyer shall be duly qualified or licensed as a foreign corporation to do business, and is in good standing, in Tennessee, if such qualification is necessary in the reasonable judgment of Buyer, and in each other jurisdiction where the character of the Assets, the Business or the nature of its activities makes such qualification or license necessary.

Section 4.3 Authorization.

4.3.1 Authority. Buyer has all requisite power and authority to enter into and perform this Agreement and to consummate the transactions contemplated hereby. This Agreement is a valid and binding obligation of it, enforceable in accordance with its terms. This Agreement has been duly executed and delivered by Buyer and constitutes, and each Other Agreement which is to be executed and delivered by Buyer, when executed and delivered by it,

shall constitute, the legal, valid and binding obligation of it, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws relating to or affecting the rights and remedies of creditors generally and by general principles of equity including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies, regardless of whether enforceability is considered in a proceeding in equity or at law.

4.3.2 No Breach or Violation. Execution, delivery and performance of this Agreement by Buyer and consummation of the transactions contemplated hereby will not cause a breach or default or otherwise conflict with any term or provision of the following:

(a) Its articles of incorporation or bylaws, as may be amended;

(b) Any court of administrative order, writ or injunction or process, or any consent decree to which it is party or is bound: (i) where such violation, breach or default would have a material adverse effect on the business, results of operations or financial condition of it, considered as a whole, or (ii) except as to which required consents, amendments or waivers shall have been obtained by it prior to the Closing for any such violation, breach or default.

Section 4.4 Litigation.

4.4.1 Litigation Pending or Threatened. There are no claims, actions, suits, hearings, arbitrations, disputes, proceedings (public or private) or governmental investigations pending or, to the best of Buyer's knowledge, threatened, against or affecting Buyer, at law or in equity, before or by any federal, state, municipal or other governmental or non-governmental department, commission, board, bureau, agency, court or other instrumentality, or by any private person or entity, there is no basis for any such action, suit or proceeding, and there are no existing or threatened, orders, judgments or decrees of any court or governmental agency affecting Buyer.

4.4.2 This Transaction. There are no legal, administrative, arbitration or other proceedings or governmental investigations pending or, to the best of Buyer's knowledge, threatened against Buyer which seek to enjoin or rescind the transactions contemplated by this Agreement or otherwise prevent Buyer from complying with the terms and provisions of this Agreement.

Section 4.5 Brokers. Buyer has not paid or become obligated to pay any fee or commission to any broker, finder, investment banker or other intermediary in connection with the transactions contemplated by this Agreement.

Section 4.6 Third Party Consent. With the exception of notification to NASDAQ Stock Market, LLC and Buyer's senior lender, there are no approvals, authorizations, certificates and consent of any third parties necessary or required for Buyer to fulfill its obligations under this Agreement.

Section 4.7 Permits. Buyer shall obtain, by Closing, any approvals, authorizations, certificates, consents, licenses, orders and/or permits of any governmental agencies, whether federal, state or local, necessary to the ownership, use or operation of the Units, Assets, or Business.

Section 4.8 Government Contracts Compliance. Buyer is not in, and consummation of this Agreement and the transactions contemplated hereby will not result in any, violation, breach or default of any term or provision of: (a) any contract, subcontract or agreement between any United States, foreign, state or local governmental or regulatory authority and Buyer or (b) any bid, proposal or quote submitted to any United States, foreign, state or local governmental or regulatory authority by Buyer.

Section 4.9 Government Authorizations. Execution, delivery and performance of this Agreement by Buyer, and consummation of the transactions contemplated hereby, will not require any consent, approval, authorization, or permit from, or any filing with or notification to, any United States, foreign, state or local governmental or regulatory authority except with respect to Government entities who are parties to Contracts, and except for a notification to NASDAQ Stock Market, LLC.

Section 4.10 Disclosures. To the best knowledge and belief of Buyer after investigation, no statement, representation or warranty made by Buyer in this Agreement, in any exhibit hereto or Schedule delivered hereunder, or in any certificate, statement, list, schedule or other document furnished or to be furnished to Sellers hereunder, contains any untrue statement of a material fact, or fails to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading.

ARTICLE V

COVENANTS

Section 5.1 Affirmative Covenants of Sellers. With respect to the Company, the Units, the Business, and the Assets, except as may be agreed in writing by Buyer, each Seller shall, and shall cause Company to, at all times from the date hereof through the Closing Date:

(a) Use its best efforts to preserve and protect the goodwill, rights, properties, assets and business organization of Company and to prevent the occurrence of any event or condition which would have a material adverse effect on the Assets, the Business or the financial condition or results of operations of Company;

(b) Use its best efforts to preserve and protect the present goodwill and relationships of Company and the Business with creditors, suppliers, customers, licensors, licensees, contractors, distributors, the U.S. Government, lessors and lessees and others having business relationships with it;

(c) Maintain clear, unencumbered title to the Units and the Assets and maintain all tangible Assets in customary repair, order and condition, reasonable wear and tear,

damage by fire and other casualty excepted, and promptly repair, restore or replace any Assets which are damaged or destroyed by fire or other casualty, whether insured or uninsured;

(d) Comply in all material respects with all applicable federal, state, foreign and local laws, rules and regulations;

(e) Maintain the books and records of Company in the usual and ordinary course consistent with past practices in such manner as is necessary to ensure satisfaction of the representations and warranties set forth in Article III of this Agreement and in a manner that fairly and accurately reflects its income, expenses, assets, and liabilities in accordance with Tax Convention;

(f) File all Tax Returns required to be filed and make timely payment of all Taxes shown to be due on such returns;

(g) Use its best efforts to obtain, prior to the Closing Date, all consents, approvals and waivers, including all such consents, approvals or waivers required to be obtained from the government (whether federal, state or local) its customers, vendors, suppliers, lessors, and consents of the other parties to the contracts and any teaming agreements, partnerships or other arrangements between Company and any other person or entity, necessary or required to vest in Buyer all of Sellers' and Company's rights and title to, and interest in, the Assets in conformity with the representations and warranties of Sellers herein;

(h) Promptly notify Buyer in writing of any adverse change in the Business or the Assets, or any adverse change with respect to the relationships of Company and its employees or its creditors, suppliers, customers, subcontractors, licensors, licensees, lessors and lessees, and others having business relationships with it;

(i) Promptly notify Buyer in writing of the threat, institution or receipt of any claim, action, suit, inquiry, proceeding, notice of violation, demand letter, subpoena, government audit or disallowance by or before any court or governmental or other regulatory or administrative agency; and

(j) Promptly supplement or amend and deliver to Buyer supplements or amendments to the Schedules that Sellers are required to prepare hereunder with respect to any matter arising hereafter which, if existing or occurring as at the date of this Agreement, would have been required to have been set forth and described in such Schedule. No supplement or amendment of a Schedule made pursuant to this Paragraph (j) of Section 5.1 shall be deemed to cure any breach of any representation or warranty made in this Agreement, nor shall any such supplement or amendment be deemed to relate back to any date prior to its delivery without the written consent of Buyer.

Section 5.2 Negative Covenants of Sellers**.** With respect to the Company, the Units, the Business, and the Assets, each Seller shall not, and shall cause Company not to, do any of the following, without the prior written consent of Buyer, from the date hereof through the Closing Date:

(a) Incur or agree to incur any obligation or liability (absolute or contingent) in connection with any of the Company, the Units, the Business, or the Assets, except liabilities arising out of, incurred in connection with, or related to the operation of the Business in the ordinary course and the consummation of this Agreement;

(b) Sell, transfer, assign, license or otherwise dispose of, or encumber in any way, any of the Units, the Company, the Business, or the Assets;

(c) Amend, modify or terminate any of the Contracts;

(d) Waive or cancel any rights or claims relating to the Company, the Units, the Business, or the Assets;

(e) Seek, solicit or agree to any offer for the sale of the Company, the Units, the Business, or the Assets or any material part thereof, or seek, solicit or agree to any merger of the Company with any other entity whereby the Company or its successor shall not be fully capable of and obligated to perform all of the Company's obligations under this Agreement;

(f) Undertake any transaction, including, but not limited to, the incurring of any indebtedness for borrowed money, except in the ordinary course of business; or

(g) Offer or enter into any contract, understanding, plan, or agreement to take any action described in this Section 5.2.

Section 5.3 Affirmative Covenants of Buyer. With respect to the Company, the Business, and the Assets, except as may be agreed in writing by Sellers and the Company, Buyer each shall at all times from the date hereof through the end of the Earn-Out Period:

(a) Use its best efforts to preserve and protect the goodwill, rights, properties, assets and business organization of the Company and to prevent the occurrence of any event or condition which would have a material adverse effect on the Business, the Assets, or the financial condition or results of operations of the Company;

(b) Use its best efforts to preserve and protect the present goodwill and relationships of the Company with creditors, suppliers, customers, licensors, licensees, contractors, distributors, the U.S. Government, lessors and lessees and others having business relationships with it;

(c) Maintain clear unencumbered title to the Units, the Company, the Business, and the Assets, with the exception of a first-lien-position security interest granted to Sellers, and a second- or third-lien-position security interest granted to a senior or mezzanine lender, and maintain all tangible Assets in customary repair, order and condition, reasonable wear and tear, damage by fire and other casualty excepted, and promptly repair, restore or replace any Assets which are damaged or destroyed by fire or other casualty, whether insured or uninsured;

(d) Comply in all material respects with all applicable federal, state, foreign and local laws, rules and regulations;

(e) Maintain the books and records of Buyer and Company in the usual and ordinary course consistent with past practices in such manner as is necessary to ensure satisfaction of the representations and warranties of Buyer as set forth in this Agreement and in a manner that fairly and accurately reflects its income, expenses, assets, and liabilities in accordance with Tax Convention;

(f) File all Tax Returns required to be filed and make timely payment of all Taxes shown to be due on such returns;

(g) Promptly notify Sellers in writing of any adverse change in the Business, or any adverse change with respect to the relationships of Buyer and Company and their employees or their creditors, suppliers, customers, subcontractors, licensors, licensees, lessors and lessees, and others having business relationships with them; and

(h) Promptly notify Sellers in writing of the threat, institution or receipt by Buyer or Company of any claim, action, suit, inquiry, proceeding, notice of violation, demand letter, subpoena, government audit or disallowance by or before any court or governmental or other regulatory or administrative agency.

Section 5.4 Negative Covenants of Buyer. With respect to the Units, the Company, the Business, and the Assets, Buyer shall not do any of the following from the date hereof through the end of the Earn-Out Period:

(a) Incur or agree to incur any obligation or liability (absolute or contingent) in connection with any of the Units, the Company, the Business, or the Assets, except liabilities arising out of, incurred in connection with, or related to the operation of the Business in the ordinary course and the consummation of this Agreement;

(b) Sell, transfer, assign, license or otherwise dispose of, or encumber in any way, any of the Units, the Company, the Business, or the Assets, with the exception of a first-lien-position security interest granted to Sellers, and a second- or third-lien-position security interest granted to a senior or mezzanine lender;

(c) Amend, modify or terminate any of the Contracts in any matter that would materially diminish the gross revenue projected as of Closing;

(d) Seek, solicit or agree to any offer for the sale of the Units, the Company, the Business, or the Assets, or any material part thereof, or seek, solicit or agree to any merger of Buyer with any other entity whereby Buyer or its successor shall not be fully capable of and obligated to perform all of Buyer’s obligations under this Agreement;

(e) Incur any indebtedness for borrowed money that is senior in lien position to the lien position of Sellers; or

(f) Offer or enter into any contract, understanding, plan, or agreement to take any action proscribed in this Section 5.4.

Section 5.5 Access to Information.

5.5.1 Access of Buyer Before Closing. Subject to the April 20, 2009 Confidentiality Agreement previously signed and delivered by the parties hereto, from and after the date of this Agreement and until the Closing Date, Buyer and its agents and representatives shall have full and complete access: (a) to all properties (whether real or personal), books and records of the Company (the confidentiality of which Buyer agrees to maintain) for purposes of conducting such investigations, appraisal or audits at its own expense as Buyer deems necessary or advisable under the circumstances; (b) to review, analyze and investigate the Intellectual Property, and all aspects concerning such property; and (c) to discuss any related business affairs of, and condition (financial or otherwise) of, Seller, the Business and/or the Business with such persons, including but not limited to the directors, officers, employees, accountants, landlords, counsel and creditors of Seller as Buyer considers necessary for the purposes of conducting its investigations, appraisals or audits in connection with the transactions contemplated by this Agreement.

5.5.2 Access of Buyer After Closing. Sellers shall furnish to Buyer all financial and Tax Return information as reasonably may be requested after the Closing for the purpose of filing or defending tax returns of Buyer or a subsequent purchaser of the Company or the Business.

5.5.3 Access of Sellers. From and after the date of this Agreement and until the end of the Earn-Out Period, Sellers and their agents and representatives shall have full and complete access, for the purpose of verifying compliance with the representations, warranties, and covenants of this Agreement: (a) to all properties (whether real or personal), books and records of Buyer relating to the Units, the Company, the Business, and the Assets (the confidentiality of which Sellers agree to maintain) for purposes of conducting such investigations, appraisals or audits at their own expense as Sellers deems necessary or advisable under the circumstances; (b) to review, analyze and investigate the Intellectual Property, and all aspects concerning such property; and (c) to discuss any related business affairs of, and condition (financial or otherwise) of, the Company, the Business, and/or the Assets with such persons, including but not limited to the directors, officers, employees, accountants, and counsel of Buyer as Sellers consider necessary for the purposes of conducting its investigations, appraisals or audits. Upon request of Sellers, Buyer shall provide the following reports:

1) Monthly income statement for the Company.

2) Monthly pipeline report.

3) Monthly schedule of completed and uncompleted projects.

Section 5.6 Filing and Authorizations. (a) To the extent not obtained prior to the Closing, Sellers each shall, after the Closing Date, continue to use its best efforts promptly to comply with all federal, state, and local laws and regulations and to obtain all necessary governmental authorizations, and approvals to: (i) obtain all consents, approvals and waivers, including all such consents, approvals or waivers required to be obtained from the government (whether federal, state or local) and Company's customers, vendors, suppliers, lessors, and consents of the other parties to the contracts and any teaming agreements, partnerships or other arrangements between Company and any other person or entity, necessary or required to vest in Buyer all of Company's rights and title to, and interest in, the Company, the Business, and the Assets in conformity with the representations and warranties of Sellers herein, and (ii) obtain all permits, licenses and waivers, with regard to the transactions contemplated by this Agreement.

(b) Buyer shall, after the Closing Date, use its best efforts to comply with all federal, state, and local laws and regulations and to obtain all necessary governmental authorizations, and approvals to: (i) obtain all consents, approvals and waivers, including all such consents, approvals or waivers required to be obtained from the government (whether federal, state or local) and Company's customers, vendors, suppliers, lessors, and consents of the other parties to the Contracts and any teaming agreements, partnerships or other arrangements between Buyer and any other person or entity, necessary or required operate the Company and the Business in conformity with the representations and warranties of Sellers herein, and (ii) obtain all permits, licenses and waivers, with regard to the transactions contemplated by this Agreement.

Section 5.7 Administration of Accounts.

5.7.1 In Trust For Buyer. All payments and reimbursements made in the ordinary course by any third party in the name of or to the Company in connection with or arising out of the Business and the Assets after the Closing Date, shall be held by Sellers in trust to the benefit of the Company and, immediately (not more than twenty-one (21) calendar days) upon receipt by Sellers of any such payment or reimbursement, Sellers shall pay over to the Company the amount of such payment or reimbursement without right of set-off.

5.7.2 In Trust for Seller**.** All payments and reimbursements made in the ordinary course by any third party in the name of or to Buyer or the Company in connection with or arising out of the Excluded Assets after the Closing Date shall be held by Buyer and the Company in trust to the benefit of Sellers and, immediately (not more than twenty-one (21) calendar days) upon receipt by Buyer or the Company of any such payment or reimbursement, Buyer or the Company shall pay over to Sellers the amount of such payment or reimbursement without right of set-off.

Section 5.8 Taxes and Other Excluded Liabilities.

5.8.1 Sellers' Obligations. Sellers acknowledge their legal obligations to pay the Excluded Liabilities, including Taxes relating to all items of income, loss, gain, deduction and credit attributable to or relating to ownership of the Company and the Business up to and including the Closing Date.

5.8.2 Buyer and Company Obligations. Buyer and the Company acknowledge their legal obligations to pay Taxes relating to all items of income, loss, gain, deduction and credit attributable to or relating to ownership of the Company and the Business assets after the Closing Date.

5.8.3 Conveyance Fees. Seller shall promptly file and pay when due any and all returns with respect to any conveyance or transfer taxes or fees, excluding sales and use taxes, with respect to the sale, transfer and purchase of the Business and the Assets of the Company under this Agreement.

Section 5.9 Further Assurances. From time to time after the Closing, Sellers shall at their own expense, execute and deliver, or cause to be executed and delivered, such documents to Buyer and the Company as they may reasonably request, and from time to time after the Closing, Buyer and Company shall, at their own expense, execute and deliver such documents to Sellers as they may reasonably request, in order to more effectively consummate the transaction contemplated by this Agreement.

Section 5.10 Public Announcements. Except as required by law, Sellers, Buyer, and Company shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement and the transactions contemplated hereby, and shall not issue any such press release or make any such public statement prior to such consultation.

Section 5.11 Risk of Loss. If between the date hereof and the Closing Date, there is any loss, destruction or other physical damage to the Business or any Assets resulting from theft, accident or any other casualty, whether or not insured, or any lien or encumbrance exists or is placed on any Units or Assets and is not removed or released on or prior to the Closing Date (collectively, a “Casualty Loss”), then Sellers shall promptly give notice to Buyer of such Casualty Loss and the amount of insurance, if any, payable to Sellers with respect thereto. If such Casualty Loss does not prevent the fulfillment of a condition to Buyer’s obligations to consummate the transactions contemplated by this Agreement, or if it does and Buyer waives such condition, then Buyer shall have the option, which shall be exercised by Buyer by giving Sellers written notice within ten (10) days after receipt of the above notice from Sellers, or if there is not ten (10) days prior to the Closing Date, as soon as possible but not less than (24) hours prior to the Closing, of either: (i) causing the affected Asset to become an Excluded Asset and Buyer shall be entitled to reduce the Purchase Price payable to Sellers at Closing pursuant to Subsection 2.3.1 in an amount equal to a binding estimate to be obtained by Sellers from a qualified third party reasonably acceptable to Buyer of the cost required to restore the affected Asset substantially to its condition prior to such Casualty Loss or the reasonably estimated value of the affected Asset; or (ii) terminating this Agreement whereupon Sellers and Buyer shall have no liabilities or obligations with respect to the transactions contemplated by this Agreement.

ARTICLES VI

CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

Section 6.1 Conditions. The obligations of Buyer under this Agreement to perform Articles I and II herein shall be subject to the fulfillment, to its reasonable satisfaction, on or prior to the Closing Date, of all of the following conditions precedent:

6.1.1 Representations and Warranties. All representations and warranties of Sellers and of Company contained in this Agreement and in all certificates, schedules and other documents delivered by Sellers to Buyer or its representatives pursuant to this Agreement and/or in connection with the transactions contemplated hereby shall be true, complete and accurate in all material respects as of the date when made and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date.

6.1.2 No Material Adverse Change**.** During the period from the date hereof to the Closing Date, Sellers shall not have sustained any material loss or damage to the Units, the Company, the Business, or the Assets, whether or not insured, nor shall there have been any material adverse change in the Business.

6.1.3 Due Diligence Review. During the period from the date hereof to the Closing Date, Buyer shall have had the opportunity to complete its due diligence investigation in connection with the transactions contemplated by this Agreement and such investigation has not revealed any fact, event or circumstance which, in its sole discretion, could be expected to have a material adverse effect on the transactions contemplated by this Agreement.

6.1.4 Schedules Delivered. All Schedules to be delivered to Buyer prior to Closing hereunder shall have been so delivered to it either at the time of execution of this Agreement or with time sufficient for Buyer's review, and each such Schedule shall be satisfactory in form and content to them, such satisfaction to be determined at their sole discretion.

6.1.5 No Adverse Facts Disclosed. Neither any investigation of Sellers, nor any disclosure Schedule, nor any other document delivered in connection with this Agreement, shall have revealed any facts and circumstances which reflect in a material adverse way on the Units, the Company, the Business, or the Assets, as determined by Buyer in its sole discretion and judgment.

6.1.6 Obtaining of Consents and Approvals. Except as otherwise contemplated by this Agreement, Sellers shall have executed and delivered to Buyer, or shall have caused to be executed and delivered, any consents, waivers, approvals, permits, licenses or authorizations which, if not obtained on or prior to the Closing Date, would have a material adverse effect on the Units, the Company, the Business, or the Assets.

6.1.7 Performance by Sellers. Sellers shall have performed and complied in all material respects with all agreements, covenants, obligations and conditions required by this Agreement to be performed or complied with by them on or before the Closing Date.

6.1.8 Absence of Litigation. There shall not be in effect any judicial or regulatory order enjoining or restraining the transactions contemplated by this Agreement, and there shall not be instituted or pending any action or proceeding before any federal, state or foreign court or governmental agency or other regulatory or administrative agency or instrumentality: (a) challenging the acquisition by Buyer of the Units, the Company, the Business, or the Assets, or otherwise seeking to restrain, materially condition or prohibit consummation of the transactions contemplated by this Agreement, or seeking to impose any material limitations on any provision of this Agreement, or (b) seeking to compel Buyer or Sellers to dispose of or hold separate, the Units, the Company, the Business, or the Assets, or any portion of them, as a result of the transactions contemplated by this Agreement.

6.1.9 Officers Certificate. Buyer shall have received a certificate, dated the Closing Date, executed by Sellers stating that the conditions set forth in Sections 6.1.1 through 6.1.3 and 6.1.5 through 6.1.7 hereof have been satisfied.

6.1.10 Delivery of Documents; Other Actions. (a) The execution and delivery to Buyer by Sellers and/or Company of the following, all dated as of the Closing Date and acceptable in form and substance to Buyer, Sellers, and Company:

(i) a separate assignment of the Units;

(ii) the agreements and documents required by the terms of this Agreement to be executed and delivered by Sellers and/or the Company;

(iii) the noncompetition, nondisclosure and nonsolicitation agreements of Sellers and employees of the Company required by Buyer and an employment agreement between the Company and Robert E. Wilson;

(iv) such other conveyances, instruments of title, assignments, consents, recordings, and other documents as may be, in the reasonable opinion of Buyer, necessary or proper to transfer to it ownership of the Units, the Company, the Business, and the Assets and rights being acquired by them hereunder; and

(v) such other documents, instruments and certificates as may be reasonably requested by Buyer or its counsel to effectuate the transactions contemplated by this Agreement, including without limitation the quotation commitments from Affiliates of Sellers referred to in Section 1.1.6.

(b) The receipt by Buyer and delivery to Sellers of evidence of bonding capacity reasonably satisfactory to Sellers, as required by Section 2.9, and the execution by and exchange among Buyer, Sellers, and Company of an agreement relating to post-closing invoices, payments, and purchase orders, and other subjects.

(c) The version of this Agreement dated as of December 29, 2009 and signed by the parties, has been approved and ratified by the Board of Directors of Buyer.

Section 6.2 Waiver. Buyer may, in its sole discretion, waive in writing fulfillment of any or all of the conditions set forth in Section 6.1 of this Agreement, provided that such waiver granted pursuant to this Section 6.2 shall have no effect upon any of the other conditions not so waived.

ARTICLE VII

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Section 7.1 Conditions. The obligations of each Seller under this Agreement to perform Articles I and II herein shall be subject to the fulfillment, to its reasonable satisfaction, on or prior to the Closing Date, of all of the following conditions precedent:

7.1.1 Representations and Warranties. All representations and warranties of Buyer contained in this Agreement and in all certificates, schedules and other documents delivered by Buyer to Sellers or their representatives pursuant to this Agreement and or in connection with the transactions contemplated hereby shall be true, complete and accurate in all material respects as of the date when made and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date.

7.1.2 No Material Adverse Change**.** During the period from the date hereof to the Closing Date, Buyer shall not have sustained any material adverse change in its business or operations.

7.1.3 Due Diligence Review. During the period from the date hereof to the Closing Date, each Seller shall have had the opportunity to complete its due diligence investigation in connection with the transactions contemplated by this Agreement and such investigation has not revealed any fact, event or circumstance which, in its sole discretion, could be expected to have a material adverse effect on the transactions contemplated by this Agreement.

7.1.4 Schedules Delivered. All Schedules to be delivered to Sellers prior to Closing hereunder shall have been so delivered to them either at the time of execution of this Agreement or with time sufficient for Sellers' review, and each such Schedule shall be satisfactory in form and content to them, such satisfaction to be determined at their sole discretion.

7.1.5 No Adverse Facts Disclosed. Neither any investigation of Buyer or any Schedule, nor any other document delivered in connection with this Agreement, shall have revealed any facts and circumstances which reflect in a material adverse way on Buyer or its

ability to carry out the events and obligations established by this Agreement through the expiration of the Earn-Out Period, as determined by Sellers in their sole discretion and judgment.

7.1.6 Obtaining of Consents and Approvals. Except as otherwise contemplated by this Agreement, Buyer shall have executed and delivered to Sellers, or shall have caused to be executed and delivered, any consents, waivers, approvals, permits, licenses or authorizations which, if not obtained on or prior to the Closing Date, would have a material adverse effect on the capacity of Buyer to honor its obligations under this Agreement.

7.1.7 Performance by Buyer. Buyer shall have performed and complied in all material respects with all agreements, covenants, obligations and conditions required by this Agreement to be performed or complied with by it on or before the Closing Date.

7.1.8 Absence of Litigation**.** There shall not be in effect any judicial or regulatory order enjoining or restraining the transactions contemplated by this Agreement.

7.1.9 Officer's Certificate. Sellers shall have received a certificate, dated the Closing Date, executed on behalf of Buyer by an appropriate Person stating that the conditions set forth in Sections 7.1.1 through 7.1.8 hereof have been satisfied.

7.1.10 Delivery of Documents; Other Actions. (a) The execution and delivery to Sellers by Buyer of the following, all dated as of the Closing Date and acceptable in form and substance to Sellers, Buyer, and Company:

(i) the consideration set forth in Article II hereof;

(ii) the agreements and documents required by the terms of this Agreement to be executed and delivered by Buyer, and an offer of an employment agreement between the Company and Robert E. Wilson;

(iii) such other documents, instruments and certificates as may be reasonably requested by Sellers or their counsel to effectuate the transactions contemplated by this Agreement; and

(iv) the Buyer's Line of Authorization or other evidence of bonding capacity reasonably satisfactory to Sellers, as required by Section 2.9.

(b) The execution by and exchange among Sellers, Buyer, and Company of an agreement relating to post-closing invoices, payments, and purchase orders, and other subjects.

(c) The version of this Agreement dated as of December 29, 2009 and signed by the parties, has been approved and ratified by the Board of Directors of Buyer.

Section 7.2 Waivers. Sellers may, in their sole discretion, waive in writing fulfillment of any or all of the conditions set forth in Section 7.1 of this Agreement, provided that such

waiver granted pursuant to this Section 7.2 shall have no effect upon any other conditions not so waived.

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Survival of Representations. All representations, warranties, covenants and agreements made by any party in this Agreement or pursuant hereto shall survive the Closing, but no claim may be made with respect to any breach of any representation or warranty hereunder after June 23, 2015. The parties acknowledge that they have performed comprehensive due diligence investigations and that they have no knowledge of any facts and circumstances which would result in the inaccuracy of any representation or warranty of Buyer, Company, and/or Sellers, as applicable.

Section 8.2 Indemnification by the Sellers. Subject to the limitations set forth in this Article 8 and the Closing of the transactions contemplated by this Agreement, each Seller shall indemnify, defend, save and hold each of Buyer and its officers, directors, employees, Affiliates and agents (collectively, "Buyer Indemnitees") harmless from and against all demands, claims, actions or causes of action, assessments, losses, damages, deficiencies, liabilities, costs and expenses, including reasonable attorneys' fees, interest, penalties, and all reasonable amounts paid in investigation, defense or settlement of any of the foregoing (collectively, "Buyer Damages") asserted against, imposed upon, resulting to or incurred by any of the Buyer Indemnitees, directly or indirectly, in connection with, or arising out of, or resulting from (i) a breach of any of the representations and warranties made by the Sellers in Article III of this Agreement, except as set forth above in Section 8.1 ("Buyer Warranty Damages"), and (ii) a breach of any of the covenants or agreements made by the Sellers, or a breach of any of the covenants or agreements of Sellers, in or pursuant to this Agreement and in any Other Agreement to which the Sellers are a party. The amount of this indemnity shall not exceed, in the aggregate, the sum of $3,450,000.00.

Section 8.3 Indemnification by Buyer. Subject to the limitations set forth in this Article 8 and the Closing of the transactions contemplated by this Agreement, Buyer shall indemnify, defend, save and hold Sellers and their officers, directors, employees, Affiliates, and agents (collectively "Seller Indemnitees") harmless from and against any and all demands, claims, actions or causes of action, assessments, losses, damages, deficiencies, liabilities, costs and expenses, including reasonable attorneys' fees, interest, penalties, and all reasonable amounts paid in investigation, defense or settlement of any of the foregoing (collectively, "Seller Damages") asserted against, imposed upon, resulting to or incurred by any of the Seller Indemnitees, directly or indirectly, in connection with, or arising out of, or resulting from (i) a breach of any of the representations and warranties made by Buyer in Article IV of this Agreement, except as set forth above in Section 8.1 ("Shareholder Warranty Damages"), or (ii) a breach of any of the covenants or agreements made by Buyer in or pursuant to this Agreement and in any Other Agreement to which Buyer is a party.

Section 8.4 Notice of Claims. If any Buyer Indemnitee or Seller Indemnitee (an "Indemnified Party") believes that it has suffered or incurred or will suffer or incur any Buyer Damages or Seller Damages ("Damages") for which it is entitled to indemnification under this Article 8, or if any legal, governmental or administrative proceeding which may result in such damages is threatened or asserted (including any written notice from any taxing authority), such Indemnified Party shall so notify the party or parties from whom indemnification is being claimed (the "Indemnifying Party") with reasonable promptness and reasonable particularity in light of the circumstances then existing. If any action at law or suit in equity is instituted by or against a third party with respect to which any Indemnified Party intends to claim any Damages, such Indemnified Party shall promptly notify the Indemnifying Party of such action or suit. The failure of an Indemnified Party to give any notice required by this Section 8.5 shall not affect any of such party's rights under this Article 8 except to the extent such failure is actually prejudicial to the rights or obligations of the Indemnifying Party.

Section 8.5 Good Faith Effort to Settle Disputes; Set-Off. The parties agree that, prior to commencing any litigation against the others concerning any matter with respect to which such party intends to claim a right of indemnification in such proceeding, Sellers and Buyer shall meet in a timely manner and attempt in good faith to negotiate a settlement of such dispute during which time such parties shall disclose to the others all relevant information relating to such dispute. In addition to any other remedy available at law or in equity, following an unsuccessful, good-faith effort to settle a dispute, any party may withhold from any monies that it owes the other parties the amount in dispute, provided that (i) such funds are deposited in an interest-bearing escrow account pending final resolution of the dispute, and (ii) written notice is given to all parties of the amount withheld and the custodian of the funds.

ARTICLE IX

TERMINATION

Section 9.1 Termination Events. Subject to the provisions of Section 9.2, this Agreement may, by written notice given at or prior to the Closing in the manner hereinafter provided, be terminated and abandoned only as follows:

9.1.1 Breach. By Sellers or by Buyer , upon written notice, if a material default or breach shall be made by the other parties, with respect to the due and timely performance of any of the other parties' respective covenants and agreements contained herein, or with respect to the due compliance with any of their respective representations and warranties contained in Article III or IV, as applicable, and such default cannot be cured prior to Closing and has not been waived;

9.1.2 Mutual Consent. By written mutual consent of all parties; or

9.1.3 Closing Date. By written notice of Sellers or Buyer, if the Closing shall not have occurred on or before December 31, 2009, which date may be extended to such later date as may be agreed upon in writing by the parties; provided, however, that the right to terminate this Agreement under this Subsection 9.1.3 shall not be available to any of the

respective parties whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

Section 9.2 Effect on Termination. In the event this Agreement is terminated pursuant to Section 9.1 herein, all further rights and obligations of the parties hereunder shall terminate, and neither any of the parties nor their Affiliates, nor any of the respective directors, officers or employees of any of the parties nor their Affiliates shall have any liability to any of the others, except that the obligations set forth in Section X herein shall survive; provided, however, that if this Agreement is so terminated by a party because one or more of the conditions to its obligations hereunder as set forth in Articles VI and VII herein is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the rights of the terminating party to pursue all legal remedies for breach of contract and damages shall survive such termination and the breaching party shall be fully liable for any and all damages, costs and expenses sustained or incurred by the terminating party as a result of such breach. In addition thereto, any nondisclosure agreement executed by the parties hereto shall survive the termination of this Agreement.

ARTICLE X

SELLER COVENANT NOT TO COMPETE

Section 10.1 Noncompetition Agreement.

10.1.1 So long as Buyer is not in material default of any of its obligations to Sellers, Sellers agree that, for a period of time equal to the Earn-Out Period plus an additional two (2) years, that is, until June 30, 2015 (the "Non-Competition Period"), Sellers shall not, directly or indirectly:

(a) engage in, carry on, be employed by or have any interest in a business substantially similar to the Business within the United States of America (collectively, the "Market Area");

(b) enter into, engage in, or be employed by any business in competition with the Company in the Market Area;

(c) induce any person, excepting Robert Wilson, who is a present or future employee, officer, agent, affiliate or customer of the Company or Buyer to terminate such person's relationship with the Company or Buyer;

(d) induce any customer, supplier or any other party with whom the Company does business to refuse to do business with the Company; or

(e) solicit, or assist any person in the solicitation of, the Company's customers.

10.1.2 Sellers acknowledge that the length of time and geographic restriction pertaining to all prohibitions in Section 10.1 are reasonable and necessary for the legitimate

protection of Buyer's and the Company's business and interests.

10.1.3 Sellers expressly agree and understand that the remedy at law for any breach by Sellers of Section 10.1 will be inadequate and that the damages flowing from such breach are not readily susceptible to being measured in monetary terms. Accordingly, Sellers' acknowledge that upon adequate proof of Sellers' violation of this Section 10.1, each of Buyer and the Company will be entitled, among other remedies and without any requirement that it post a bond in order to obtain any such relief, to immediate injunctive relief and may obtain a temporary restraining order restraining any threatened or further breach. Nothing in this Article X will be deemed to limit Buyer's or the Company's remedies at law or in equity for any breach by Sellers of any of the provisions of this Agreement.

10.1.4 In the event any court of competent jurisdiction determines that the specified time period or geographical area set forth in Section 10.1 is unreasonable, arbitrary or against public policy, then a lesser time period or geographical area that is determined by the court to be reasonable, non-arbitrary and not against public policy shall be enforced.

10.1.5 In the event Sellers violate any legally enforceable provision of this Article X as to which there is a specific time period during which Sellers are prohibited from taking certain actions or engaging in certain activities, then, in such event the violation will toll the running of the time period from the date of the violation until the violation ceases.

Section 10.2. Allowed Competition. The provisions of Section 10.1 shall not apply with respect to:

10.2.1 Any work by Sellers and/or other corporations, limited liability companies, partnerships, trusts, or other business entities, including sole proprietorships, owned or controlled by Sellers, which work is consistent with the business activities of electrical contracting and lighting maintenance of that entity that existed prior to the Closing Date. In the event a business entity controlled by Sellers is requested by an unrelated party to perform services which are in direct conflict with the Business of the Company, Sellers shall use their best efforts to promote the interests of the Company;

10.2.2 Any work which the Company is unable to bond or otherwise unable to place under contract;

10.2.3 Any work or a contract on which the Company materially defaults and/or fails to remedy a material breach; and

10.2.4 Any work or a contract when Buyer or the Company goes bankrupt, goes into receivership, and/or otherwise goes into reorganization and for which Buyer or the Company fails to reaffirm the contract and/or work.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Expenses. Each of the respective parties to this Agreement shall pay its own costs and expenses (including all legal, accounting, broker, finder and investment banker fees) relating to this Agreement, the negotiations leading up to this Agreement, and the transactions contemplated by this Agreement.

Section 11.2 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all parties. No waiver by any party of any default, misrepresentation, or breach of representation, warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of representation, warranty or covenant hereunder or affect in any way any tights arising by virtue of any prior or subsequent such occurrence.

Section 11.3 Entire Agreement. This Agreement, including the Exhibits hereto and the Schedules delivered hereunder, contain all of the terms, conditions and representations and warranties agreed upon by the parties relating to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, negotiations, correspondence, undertakings, and communications of the parties, oral or written, respecting such subject matter; provided, however, that the parties from time to time may agree in writing on interpretations of the provisions of this Agreement, and that the confidentiality agreement dated April 20, 2009 executed by the parties shall remain in full force and effect accordingly to its terms.

Section 11.4 Notices. All notices, requests, demands and other communications made in connection with this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery, if delivered by hand to the persons identified below, or on the date of receipt if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Buyer: Energy Focus, Inc.
32000 Aurora Road
Solon, Ohio 44321
Attn: Mr. Joseph G. Kaveski, Chief Executive Officer
Facsimile No.: 440.848.8561

With a copy to: Mr. Gerald W. Cowden
Cowden & Humphrey Co. LPA
4600 Euclid Avenue, Suite 400
Cleveland, Ohio 44103
Facsimile No.: 216.241.2881

If to Sellers: Mrs. Jami Hall
1244 Gallatin Pike South
Madison, Tennessee 37115
Facsimile No.: 615.883.0988

With a copy to: Mr. John I. Harris, III
Of counsel
Schulman, Leroy & Bennett, PC
P. O. Box 190676
501 Union Street, Seventh Floor
Nashville, Tennessee 37219
Facsimile No.: 615.254.5407

Section 11.5 Severability. If any provision of this Agreement is held to be unenforceable for any reason, the parties shall negotiate to adjust such provision rather than have such clause become void, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible. In any event all other provisions of this Agreement shall be deemed valid and enforceable to the full extent possible.

Section 11.6 Cumulative Remedies. The remedies provided herein are cumulative and not exclusive and shall not preclude assertion by either party hereto of any other rights or the seeking of any other remedies against the other party.

Section 11.7 Waiver. Waiver of any term or condition of this Agreement by any of the parties shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other term or condition, of the Agreement.

Section 11.8 Assignment. No party to this Agreement may assign or delegate, by operation of law or otherwise, all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement, which it may withhold in its absolute discretion; provided, however, that Buyer may assign this Agreement in connection with a merger or consolidation involving Buyer, or a sale of substantially all of Buyer's assets, so long as the purchaser or assignee assumes Buyer's obligations under this Agreement.

Section 11.9 Successors and Assigns. The rights, liabilities and obligations of the parties hereto arising under this Agreement shall attach to and be binding upon the parties, and their heirs, representatives, successors, and permitted assigns.

Section 11.10 No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any person or entity who is not a party to this Agreement.

Section 11.11 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

Section 11.12 Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and of the United States, without giving effect to the doctrine of conflicts of laws. The parties each agree that the federal and state courts located within the State of Ohio and the State of Tennessee shall have nonexclusive

jurisdiction as to all matters, actions, claims or disputes arising out of this Agreement or the transactions contemplated hereby.

Section 11.13 Dispute Resolution. The parties agree to use their diligent efforts in order to reach an amicable agreement with respect to all disagreements which might arise under this Agreement. All disputes arising under this Agreement which are not settled amicably as specified above shall be finally settled in accordance with the following:

11.13.1 The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the controversy.

11.13.2 The disputing party shall give the other party written notice of the dispute. Within twenty (20) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of each party's position, and (b) the name and title of the executive who will represent the party. The executives shall meet at a mutually acceptable time and place within one (1) month of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

11.13.3 If the matter has not been resolved within two (2) months of the disputing party's notice, or if the party receiving said notice will not meet within one (1) month, both parties agree that each party shall be free to pursue all remedies at law, in equity or otherwise without any other obligations pursuant to this Section 11.13.

Section 11.14 Construction.

11.14.1 Words. All references in this Agreement to the singular shall include the plural, the plural shall include the singular where applicable, and all references to gender shall include both genders and the neuter. All references in this Agreement to days shall be calendar days unless specified as business days. All accounting terms not otherwise identified herein shall have the meanings assigned to them in accordance with general accepted accounting principles consistently applied.

11.14.2 No Presumption. In interpreting any provision of this Agreement no presumption shall be drawn against the party drafting the provision.

11.14.3 Headings. The table of contents and the headings of each Article, Section and Subsection herein are for the purposes of convenience only and shall not be read or interpreted as having any meaning or effect.

(Signatures on the following page.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

SELLERS:

TLC INVESTMENTS, LLC

By: /s/ Jami Hall
Name: Jami Hall
Its: President

/s/ Jami Hall
Jami Hall

/s/ Robert E. Wilson
Robert E. Wilson

COMPANY:

STONES RIVER COMPANIES, LLC

By: /s/ Jami Hall
Name: Jami Hall
Its: President

BUYER:

ENERGY FOCUS, INC.

By: /s/ Joseph G. Kaveski
Name: Joseph G. Kaveski
Its: Chief Executive Officer

APPENDIX AND SCHEDULES

Index

APPENDIX

SCHEDULES

APPENDIX A

Definitions

References to Certain Definitions:

"Accounts Receivable "shall have the meaning set/forth in Section A-8 of Appendix A
"Assets" shall have the meaning set forth in Section A-1 of Appendix A
"Benefit Plan" shall have the meaning set forth in Section 3.16
"Business" shall have the meaning set forth in Section A-1 of Appendix A
"Buyer Damages" shall have the meaning set forth in Section 8.2
"Buyer Indemnitees" shall have the meaning set forth in Section 8.2
"Buyer Warranty Damages" shall have the meaning set forth in Section 8.2
"CAA" shall have the meaning set forth in Section 3.17.2
"Cash Purchase Price" shall have the meaning set forth in Section 2.2.
"Casualty Loss" shall have the meaning set forth in Section 5.11
"CERCLA" shall have the meaning set forth in Section 3.17.2
"CERCLIS" shall have the meaning set forth in Section 3.17.5
"Closing Date" shall have the meaning set forth in Section 2.1
"Closing" shall have the meaning set forth in Section 2.1
"Contracts" shall have the meaning set forth in Section A-8 of Appendix A
"Company Financial Statements" shall have the meaning set forth in Section 3.4.1
"Convertible Promissory Note" shall have the meaning set forth in Section 2.4
"Copyrights" shall have the meaning set forth in Section A-6 of Appendix A
"Customer Lists" shall have the meaning set forth in Section A-7 of Appendix A
"Damages" shall have the meaning set forth in Section 8.4
"Earn-Out" and "Earn-Out Period" shall have the meanings set forth in Section 2.3.
"Encumbrances" shall have the meaning set forth in Section 3.5.1
"Environmental Law" shall have the meaning set forth in Section 3.17.5
"Equipment" shall have the meaning set forth in Section A-2 of Appendix A
"ESCO" shall have the meaning set forth in Section A-1 of Appendix A
"Excluded Assets" shall have the meaning set forth in Section 1.1.2
"Excluded Liabilities" shall have the meaning set forth in Section 1.1.3
"FWPCA" shall have the meaning set forth in Section 3.17.2
"Hazardous Substance" shall have the meaning set forth in Section 3.17.3
"Hazardous Waste" shall have the meaning set forth in Section 3.17.3
"Indemnified Party" shall have the meaning set forth in Section 8.4
"Indemnifying Party" shall have the meaning set forth in Section 8.4
"Intellectual Property" shall have the meaning set forth in Section A-3 of Appendix A
"Interim Balance Sheet" shall have the meaning set forth in Section 3.4.1
"Inventory" shall have the meaning set forth in Section A-8 of Appendix A
"Know-How" shall have the meaning set forth in Section A-4 of Appendix A
"Line of Authorization" shall mean the bonding document referred to in Section 7.1.10
"Market Area" shall have the meaning set forth in Section 10.1.1
"Non-Competition Period" shall have the meaning set forth in Section 10.1.1

“Other Agreement” shall have the meaning set forth in Section 3.1
“Person” shall have the meaning set forth in Section 3.1
“Promissory Note” shall have the meaning set forth in Section 2.4
“Qualified Plan” shall have the meaning set forth in Section 3.16.4
“RCRA” shall have the meaning set forth in Section 3.17.2
“Regulated Material” shall have the meaning set forth in Section 3.17.5
“Rent Agreement” shall have the meaning set forth in Section 2.12
“Reviewed Annual Statement” shall have the meaning set forth in Section 3.4.1
“Security Agreement” shall have the meaning set forth in Section 2.5
“Securities Right” shall have the meaning set forth in Section 3.19.1
“Seller Damages” shall have the meaning set forth in Section 8.3
“Seller Indemnitees” shall have the meaning set forth in Section 8.3
“Seller Indemnitees” shall have the meaning set forth in Section 8.3
“Seller Plan” shall have the meaning set forth in Section 3.16.1
“Shareholder Warranty Damages” shall have the meaning set forth in Section 8.3
“Solid Waste” shall have the meaning set forth in Section 3.17.3
“Spill” shall have the meaning set forth in Section 3.17.4
“Tax Convention” shall have the meaning set forth in Section 3.4.2
“Tax Returns” shall have the meaning set forth in Section 3.15
“Taxes” shall have the meaning set forth in Section 3.15
“Trademarks” shall have the meaning set forth in Section A-5 of Appendix A
“Transition and Post-Closing Operations Agreement” shall have the meaning set forth in Section 2.13
“TSCA” shall have the meaning set forth in Section 3.17.2
“Unit” shall have the meaning set forth in the Recitals
“Unit Pledge Agreement” shall have the meaning set forth in Section 2.6
“Wastes” shall have the meaning set forth in Section 3.17.3
“Working Capital” shall have the meaning set forth in A-8 of Appendix A

Certain Other Definitions:

A-1. Assets and Business. All assets, properties, rights, and contracts, wherever located, whether tangible or intangible, which are owned by, licensed by, and/or leased by Company, whether or not reflected on the books and records of Company including without limitation the Contracts, Accounts Receivable, Working Capital, Inventory, Customer Lists, Equipment, and Intellectual Property (the “Assets”), and which are used in the business of providing lighting, retrofit, and energy services to energy service companies (“ESCOs”) as operated by Company (the “Business”).

A-2. Equipment. All equipment, brochures, catalogues, manuals, guides and references, furniture, computers (including transferable operating system software and licenses thereof used thereon) and other office equipment, office supplies, and other tangible assets (“Equipment”).

A-3. Intellectual Property. (i) All inventions (whether patentable or unpatentable whether or not reduced to practice), all improvements thereto, and all patents, utility models, design

patents, patent applications, and patent disclosures, together with all re-issuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof, (ii) all trademarks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connections therewith, including the Trademarks, (iii) all copyrightable works, all copyrights, and all mask works and all applications, registrations, and renewals in connection therewith, including the Copyrights, (iv) all mask works and all applications, registrations, and renewals in connection therewith, (v) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, schematics, engineering information, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), including the Know-How, (vi) all transferable computer software (including data and related documentation), (vii) all other proprietary rights, and (viii) all copies and tangible embodiments thereof (in whatever form or medium) ("Intellectual Property").

A-4. Know-How. All (i) research and development results, processes, trade secrets, methods, operating techniques, know-how, algorithms, formulae, specifications, drawings, designs, chip designs, mask works, inventions, discoveries and engineering information, and (ii) quality control, testing, operational, logistical, maintenance and other technical data and information and technology; and all documents, notebooks, engineering and software development logbooks, tapes, discs, records, reports and other media relating thereto ("Know-How").

A-5. Trademarks. All trademarks, trade names and service marks, and registrations and applications for such trademarks, trade names and service marks domestic and foreign, used in the Business ("Trademarks").

A-6. Copyrights. All copyrights, and registration and applications for such copyrights, domestic and foreign, used in the Business ("Copyrights").

A-7. Customer Lists. All customer lists of the Business and all records relating to purchase orders, contracts, and any other items or list possessed or used in the Business, made by or for Company with respect to sales or future sales of products, goods or services. The customer lists shall include all records and any other available document or media bearing information relating to current, former or prospective customers (all available years) of the Business, together with all of Company's right, title and interest in and to such customer lists, rights to contract renewals and other rights to provide services to the customers of Company, and any and all rights under agreements Company may have with third parties relating thereto (collectively, the "Customer Lists").

A-8. Contracts, Projects, Proposals, and Related Accounts Receivable, Working Capital and Inventory. All contracts, subcontracts, licenses and sublicenses, agreements, projects and other arrangements, proposals, bids, quotations, purchase orders and commitments, and sales orders and commitments, including joint venture, teaming and partnership agreements, and

leases of personal property, in each case limited to those specifically identified on Schedule A-8 delivered hereunder (collectively, the "Contracts"). All right, title and interest in and to Company's accounts receivable which have arisen under the Contracts and remain outstanding and unpaid as of the Closing Date, including all documentation maintained by Company evidencing the same (collectively, the "Accounts Receivable"). All right, title, and interest in and to the Company's "working capital" under the Contracts, with "working capital" being defined as the excess of receivables associated with a project over costs associated with the project. All right, title and interest in and to the Company's "inventory" under the Contracts, with "inventory" being defined as all goods, merchandise, work-in-progress, raw materials, finished goods, and all other materials, supplies and tangible personal property associated with a project.

A-9. "Code" shall mean Section 1060 of the Internal Revenue Code of 1986, as amended.

A-10. "ERISA" shall mean Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, and the applicable rulings and regulations thereunder.

SCHEDULE 1.1

Excluded Assets and Liabilities

Excluded Assets:

Balance Sheet. All balance sheet assets, with the exception of Contracts set forth on Schedule A-8 and certain items of equipment as the parties shall agree.

Insurance. All rights under any Company-owned insurance policies, including, but not limited to, any cash surrender value or cancellation value as of the Closing Date.

Personal Items. Personal items of Sellers.

Excluded Liabilities:

Taxes. Any and all Taxes of the Company relating to time periods and/or events occurring before the Closing Date.

Environmental Liability. Any and all environmental obligations, charges, liabilities, or conditions of the Company relating to time periods and/or events occurring before, or conditions existing as of, the Closing Date.

Litigation. Any and all obligations, liabilities, or judgments relating to litigation, threatened litigation, or claims relating to time periods and/or events occurring before the Closing Date, with the exception of workers compensation claims made after the Closing Date.

SCHEDULE 3.0

Disclosure Schedule

Section 3.7.2:

The name of the Company as a Tennessee limited liability company: “Stones River Companies, LLC”.

SCHEDULE 4.0

Disclosure Schedule

None

SCHEDULE A-8

Contracts

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Execution copy

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE ***"ACT"***), AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS A REGISTRATION STATEMENT UNDER THE ACT WITH RESPECT TO THIS NOTE HAS BECOME EFFECTIVE OR UNLESS LENDER ESTABLISHES TO THE SATISFACTION OF MAKER THAT AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

ENERGY FOCUS, INC.

CONVERTIBLE PROMISSORY NOTE

$500,000.00 December 31**,** 2009 (***"Issuance Date"***)

FOR VALUE RECEIVED, **ENERY FOCUS, INC**., a Delaware corporation (***"Maker" or "Energy Focus"***), hereby promises to pay to the order of **TLC INVESTMENTS, LLC**, a Tennessee limited liability company, and **Jami Hall** and **Robert E. Wilson**, Tennessee residents (collectively, the ***"Lender"***) at the address specified in Section 5(g) hereof, or at such other place as Lender may from time to time direct, at the times hereinafter set forth, in lawful money of the United States, the unpaid principal amount of Five Hundred Thousand Dollars ($500,000.00). Maker also promises to pay Lender interest accruing on such unpaid principal amount at a rate equal to the "Wall Street Journal Prime Rate" in effect from time to time as and when announced and reported in the Journal and at www.bankrate.com plus two percent (2%) (the ***"Rate"***) in accordance with the terms and provisions of this Convertible Promissory Note (this ***"Note"***), provided that no interest shall accrue or be payable following any notice pursuant to Section 1(b) of this Note unless an Event of Default (as hereinafter defined) shall have occurred and is continuing.

This Note is made pursuant to the Member Interest Purchase Agreement between Maker and Lender signed on December 29, 2009 and is secured by (1) a Security Agreement between Maker and Lender (the "Security Agreement") and (2) a Member Interest Pledge Agreement between Maker and Lender (the "Pledge Agreement").

SECTION 1. PAYMENTS

(a) Principal and Interest. The entire outstanding principal balance of this Note, together with all accrued interest thereon, will be due and payable on June 30, 2013 (the ***"Maturity Date"***).

(b) Prepayments. Except as otherwise indicated in this Note, this Note may not be prepaid at any time prior to the Maturity Date without at least sixty (60) days written notice to Lender and/or the written consent of Lender. Maker shall not have the right to prepay

this Note and/or to give notice of intent to prepay prior to the time that Lender's conversion rights mature pursuant to Section 3 hereof.

(c) Application of Payments. All payments made by Maker under this Note shall be applied first to any costs or charges payable under this Note, second to accrued interest on the Note and the remainder shall be applied to principal.

(d) Cancellation of Note. Upon payment in full of the principal balance of this Note and any charges, costs and accrued interest thereon, this Note will be automatically cancelled and Maker's payment obligations hereunder will be extinguished.

(e) Special Fee. If the reported closing price of a share of Common Stock of Energy Focus on the national securities exchange, or on the automated quotation system of a registered securities association, on which the shares of Common Stock are traded, shall not be equal to or greater than $2.00 for at least twenty (20) trading days between June 30, 2010 and June 30, 2013, then Maker shall pay Lender an additional fee of $500,000.00 on the Maturity Date.

SECTION 2. OTHER PAYMENT TERMS

(a) Waivers. Maker hereby waives presentment, demand for payment, notice of non-payment, protests, notice of protests, notice of dishonor and all other notices in connection with this Note. No waiver by Lender shall be deemed to have been made unless such waiver is in writing and signed by Lender. Lender reserves the right to waive or refrain from waiving any right or remedy under this Note. No delay or omission on the part of Lender in exercising any right or remedy under this Note shall operate as a waiver of such right or remedy or of any other right or remedy under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any future occasion.

(b) Default. Upon and after the occurrence of an Event of Default (as hereinafter defined), Lender, in addition to any other remedies available at law or in equity, or under the Security Agreement or the Pledge Agreement, shall have the right without presentment, notice or demand of any kind to (i) accelerate this Note and to declare all of the obligations of Maker under this Note immediately due and payable and/or (ii) to convert the Note in accordance with the terms of Section 3.

(c) Event of Default. For purposes of this Note, an ***"Event of Default"*** occurs if: (a) the Maker does not make the payment of the principal of, and interest on, this Note when the same becomes due and payable, and such failure continues for the period and after the notice specified below; (b) the Maker fails to comply with any of its other obligations under this Note, and such failure continues for the period and after the notice specified below; (c) the Maker, pursuant to or within the meaning of any Bankruptcy Law as hereinafter defined): (i) commences a voluntary case; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a Custodian (as hereinafter defined) of it or for all or substantially all of its property; (iv) makes a general assignment for the benefit of its creditors; or (v) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (A) is for relief against the Maker in an involuntary case; (B) appoints a Custodian of

the Maker or for all or substantially all of its property; or (C) orders the liquidation of the Maker, and the order or decree remains unstayed and in effect for 90 days; (d) the Maker shall default under any Senior Indebtedness; (e) the Maker shall redeem any class of capital stock junior to the Note; (f) the Maker shall sell substantially all of its assets; (g) a Change in Control of the Maker shall occur; or (h) Maker shall have an uncured default under the Member Interest Purchase Agreement of even date.

As used in this Section 2, the term "Bankruptcy Law" means Title 11 of the United States Code or any similar federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

A default under clause (a) or (b) in Section 2(c) above is not an Event of Default until the Holder notifies the Maker of such default and the Maker does not cure it within ten (10) days after the receipt of such notice, which must specify the default, demand that it be remedied and state that it is a "Notice of Default."

As used in this Section 2, a "Change in Control" shall be deemed to have occurred if and when: (i) any person or group of persons acting in concert shall have acquired ownership of or the right to vote or to direct the voting of shares of capital stock of the Maker representing thirty percent (30%) or more of the total voting power of the Maker; or (ii) the Maker shall have merged into or consolidated with another corporation, or merged another corporation into the Maker, on a basis whereby less than fifty percent (50%) of the total voting power of the surviving corporation is represented by shares held by former shareholders of the Maker prior to that merger or consolidation.

SECTION 3. CONVERSION OF NOTE.

(a) Conversion. Lender shall have the right to convert the principal of the Note, in whole but not in part, into Five Hundred Thousand (500,000) shares of common stock of the Maker at any time during the period commencing on June 30, 2010 and ending on the Maturity Date. Upon conversion, any and all accrued interest and other costs shall be immediately due and payable in cash.

(b) Conversion Procedure. In order to convert this Note into common stock of Maker, the Holder must (i) complete and sign the Notice of Conversion attached hereto as Exhibit C, (ii) surrender the Note to the Maker, and (iii) furnish appropriate endorsements and transfer documents if so requested by the Maker. The conversion date will be the date all of the foregoing requirements have been satisfied.

(c) Issuance of Conversion Shares. Upon the occurrence of a conversion pursuant to Section 3(b), Lender shall surrender this Note at the office of Maker. Thereupon, there shall be issued and delivered to Lender share certificate(s) or other document(s) representing the number of Conversion Shares into which this Note was convertible on the date of conversion.

(d) Registration Rights. The Holder shall have Registration Rights, as set

forth on Exhibit A.

SECTION 4. REPRESENTATIONS OF MAKER

Maker hereby represents and warrants to Lender as of the Issuance Date:

(a) Organization, Qualifications and Power. Maker is a Delaware corporation and its certificate of registration is in full force and effect. Maker has all requisite power and authority to own or lease its properties and assets and to conduct its business as it is presently being conducted and to issue, sell and deliver this Note.

(b) Authorization. The execution and delivery by Maker of this Note and the performance by Maker of its obligations hereunder have been duly authorized by all requisite limited liability company action.

(c) Validity. This Note has been duly executed and delivered by Maker and constitutes the legal, valid and binding obligation of Maker, enforceable against Maker in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of the United States (both state and federal), affecting the enforcement of creditors' rights or remedies in general as may from time to time be in effect and the exercise by courts of equity powers or their application of public policy.

SECTION 5. MISCELLANEOUS

(a) Amendments. No amendment or waiver of any provision of this Note, nor consent to any departure by Maker herefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Severability. If any term, covenant or provision contained in this Note, or the application thereof to any Person or circumstance, shall be determined to be void, invalid, illegal or unenforceable to any extent or shall otherwise operate to invalidate this Note, in whole or part, then such term, covenant or provision only shall be deemed not contained in this Note; the remainder of this Note shall remain operative and in full force and effect and shall be enforced to the greatest extent permitted by law as if such clause or provision had never been contained herein or therein; and the application of such term, covenant or provision to other Persons or circumstances shall not be affected, impaired or restricted thereby.

(c) Captions. The captions or headings at the beginning of any paragraph or portion of any paragraph in this Note are for the convenience of Maker and Lender and for purpose of reference only and shall not limit or otherwise alter the meaning of the provisions of this Note.

(d) Interest Computation. All interest payable pursuant to this Note will be computed on the basis of a 365-day year for the actual number of days elapsed. In no contingency or event whatsoever shall interest charged hereunder, however such interest may be

characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that Lender has received interest hereunder in excess of the highest rate applicable hereto, Lender shall promptly refund such excess interest to Maker.

(e) Usury Savings Clause. It is the intention of the parties hereto to comply with applicable state and federal usury laws from time to time in effect. Accordingly, notwithstanding any provision to the contrary in this Note or any other document related hereto, in no event (including, but not limited to, prepayment or acceleration of the maturity of any obligation) will this Note or any such other document require the payment or permit the collection or receipt of interest in excess of the highest lawful rate. If under any circumstance whatsoever, any provision of this Note or of any other document pertaining hereto will provide for the payment, collection or receipt of interest in excess of the highest lawful rate, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstances Lender will ever receive anything of value as interest or deemed interest by applicable law under this Note or any other document pertaining hereto or otherwise an amount that would exceed the highest lawful rate, such amount that would exceed the highest lawful rate shall be applied to the reduction of the principal amount owing under this Note or on account of any other indebtedness of Maker to Lender, and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of this Note and such other indebtedness, such excess shall be refunded to Maker. In determining whether or not the interest paid or payable with respect to any indebtedness of Maker to Lender, under any specified contingency, exceeds the highest lawful rate, Maker and Lender will, to the maximum extent permitted by applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, (iii) amortize, prorate, allocate and spread the total amount of interest throughout the full term of such indebtedness (including any extension or renewal) so that interest thereon does not exceed the maximum amount permitted by applicable law, and/or (iv) allocate interest between portions of such indebtedness, to the end that no such portion shall bear interest at a rate greater than that permitted by applicable law. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event that the maturity of this Note is accelerated. If at any time the Rate exceeds the highest lawful rate, then the rate at which interest shall accrue hereunder shall automatically be limited to the highest lawful rate, and shall remain at the highest lawful rate until the total amount of interest accrued hereunder equals the total amount of interest that would have accrued but for the operation of this sentence. Thereafter, interest shall accrue at the Rate unless and until the Rate again exceeds the highest lawful rate, in which case the immediately preceding sentence shall apply.

(f) Governing Law. This Note shall in all respects be governed by, and construed and interpreted in accordance with, the internal substantive laws of the State of Delaware without giving effect to the principles of conflicts of law thereof.

(g) Notices. Any notice, request or other communication required or permitted hereunder will be in writing and be deemed to have been duly given (a) when personally delivered or sent by facsimile transmission (the receipt of which is confirmed in writing), (b) one business day after being sent by a nationally recognized overnight courier

service or (c) five business days after being sent by registered or certified mail, return receipt requested, postage prepaid, to the parties at their respective addresses set forth below.

If to Maker: Energy Focus, Inc.
32000 Aurora Road
Solon, Ohio 44321
Attention: Mr. Joseph G. Kaveski
Chief Executive Officer
Facsimile: 440.848.8561

If to Lender: TLC Investments, LLC
1244 Gallatin Pike South
Madison, Tennessee 37115
Attention: Ms. Jami Hall
President
Facsimile: 615.883.0988

(h) Waiver of Jury Trial. MAKER IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE OTHER RELATED DOCUMENTS OR THE ACTIONS OF LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

ENERGY FOCUS, INC.

By: /s/ Joseph G. Kaveski
Name: Joseph G. Kaveski
Title: Chief Executive Officer

EXHIBIT A

Registration Rights

The following terms in Exhibit A shall have the following meanings:

"Company" shall mean Energy Focus, Inc.

"Investor" shall mean TLC Investments, LLC.

"Registerable Securities" shall mean the Conversion Shares.

"Transaction Documents" shall mean the Convertible Promissory Note.

Section 1.1. **Shelf Registration**.

(a) As promptly as possible, and in any event on or prior to the Filing Date, the Company shall prepare and file with the Commission a "shelf" Registration Statement covering the resale of all Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. If for any reason (including, without limitation, the Commission's interpretation of Rule 415) the Commission does not permit all of the Registrable Securities to be included in such Registration Statement, then the Company shall prepare and file with the Commission one or more separate Registration Statements with respect to any such Registrable Securities not included with the initial Registration Statements, as soon as allowed under SEC Regulations and is commercially practicable. The Registration Statement shall be on a Form S-3; in the event Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form in accordance herewith and (ii) attempt to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statements then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act or requires the Investor to be named as an "underwriter", the Company shall use its commercially reasonable best efforts to persuade the SEC that the offering contemplated by the Registration Statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that the Investor is not an "underwriter". The Investor shall have the right to participate or have their counsel participate in any meetings or discussions with the SEC regarding the SEC's position and to comment or have her counsel comment on any written submission

made to the SEC with respect thereto, and to have such comments relayed to the SEC with the consent of the Company, not to be unreasonably withheld. No such written submission shall be made to the SEC to which the Investor's counsel reasonably objects. In the event that, despite the Company's commercially reasonable efforts and compliance with the terms of this Section 2(e), the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the "**Cut Back Shares**") and/or (ii) with the consent of the Investor's counsel, not to be unreasonably withheld, agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company's compliance with the requirements of Rule 415; provided, however, that the Company shall not agree to name the Investor as an "underwriter" in such Registration Statement without the prior written consent of the Investor (collectively, the "**SEC Restrictions**"). No liquidated damages shall accrue on or as to any Cut Back Shares until such time as the Company is able, using commercially reasonable efforts, to effect the filing of an additional Registration Statement with respect to the Cut Back Shares in accordance with any SEC Restrictions (such date, the "**Restriction Termination Date**"). From and after the Restriction Termination Date, all of the provisions of this Agreement (including the liquidated damages provisions) shall again be applicable to the Cut Back Shares; provided, however, that for such purposes, references to the Filing Date shall be deemed to be the Restriction Termination Date.

(b) The Company shall use its best efforts to cause each Registration Statement filed hereunder to be declared effective by the Commission as promptly as possible after the filing thereof, but in any event prior to the Required Effectiveness Date, and shall use its best efforts to keep the Registration Statement continuously effective under the Securities Act until the earlier of (i) the fifth anniversary of the Effective Date, (ii) the date when all Registrable Securities covered by such Registration Statement have been sold publicly, or (iii) the date on which the Registrable Securities are eligible for sale without volume limitation within a three-month period pursuant to Rule 144 or any successor thereto (the "**Effectiveness Period**"). The Company shall notify the Investor in writing promptly (and in any event within one Business Day) after receiving notification from the Commission that the Registration Statement has been declared effective.

(c) As promptly as possible, and in any event no later than the Post-Effective Amendment Filing Deadline, the Company shall prepare and file with the Commission a Post-Effective Amendment. The Company shall use its best efforts to cause the Post-Effective Amendment to be declared effective by the Commission as promptly as possible after the filing thereof. The Company shall notify the Investor in writing promptly (and in any event within one Business Day) after receiving notification from the Commission that the Post-Effective Amendment has been declared effective.

(d) If the Company issues to the Investor any Common Stock pursuant to the Transaction Documents that is not included in the initial Registration Statement, then

the Company shall file an additional Registration Statement covering such number of shares of Common Stock on or prior to the Filing Date and shall use it best efforts, but in no event later than the Required Effectiveness Date, to cause such additional Registration Statement to be declared effective by the Commission.

(e) The Registration Statement shall not include any securities other than the Registrable Securities without the prior written consent of the Investor.

Section 1.2. **Registration Process**. In connection with the registration of the Registrable Securities pursuant to Section 1.1, the Company shall:

(a) Prepare and file with the Commission the Registration Statement and such amendments (including post effective amendments) to the Registration Statement and supplements to the prospectus included therein (a "**Prospectus**") as the Company may deem necessary or appropriate and take all lawful action such that the Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading and that the Prospectus forming part of the Registration Statement, and any amendment or supplement thereto, does not at any time during the Registration Period include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.;

(b) Comply with the provisions of the Securities Act with respect to the Registrable Securities covered by the Registration Statement until the end of the Effectiveness Period;

(c) Prior to the filing with the Commission of the Registration Statement (including any amendments thereto) and the distribution or delivery of any Prospectus (including any supplements thereto), provide draft copies thereof to the Investor and reflect in such documents all such comments as the Investor (and her counsel) reasonably may propose and furnish to the Investor and her legal counsel identified to the Company (i) promptly after the same is prepared and publicly distributed, filed with the Commission, or received by the Company, one copy of the Registration Statement, each Prospectus, and each amendment or supplement thereto, and (ii) such number of copies of the Prospectus and all amendments and supplements thereto and such other documents, as the Investor may reasonably request in order to facilitate the disposition of the Registrable Securities;

(d) (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions as the Investor reasonably requests, (ii) prepare and file in such jurisdictions such amendments (including post effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof at all times during the Registration Period, (iii) take all such other lawful actions as may be necessary to maintain such registrations and qualifications in

effect at all times during the Registration Period, and (iv) take all such other lawful actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (A) qualify to do business in any jurisdiction where it would not otherwise be required to qualify, (B) subject itself to general taxation in any such jurisdiction or (C) file a general consent to service of process in any such jurisdiction;

(e) As promptly as practicable after becoming aware of such event, notify the Investor of the occurrence of any event, as a result of which the Prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and promptly prepare an amendment to the Registration Statement and supplement to the Prospectus to correct such untrue statement or omission, and deliver a number of copies of such supplement and amendment to the Investor as the Investor may reasonably request;

(f) As promptly as practicable after becoming aware of such event, notify the Investor (or, in the event of an underwritten offering, the managing underwriters) of the issuance by the Commission of any stop order or other suspension of the effectiveness of the Registration Statement and take all lawful action to effect the withdrawal, rescission or removal of such stop order or other suspension;

(g) Take all such other lawful actions reasonably necessary to expedite and facilitate the disposition by the Investor of his Registrable Securities in accordance with the intended methods therefor provided in the Prospectus which are customary under the circumstances;

(h) Make generally available to its security holders as soon as practicable, but in any event not later than 18 months after the Effective Date of the Registration Statement, an earnings statement of the Company and its Subsidiary complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder;

(i) In the event of an underwritten offering, promptly include or incorporate in a Prospectus supplement or post effective amendment to the Registration Statement such information as the underwriters reasonably agree should be included therein and to which the Company does not reasonably object and make all required filings of such Prospectus supplement or post effective amendment as soon as practicable after it is notified of the matters to be included or incorporated in such Prospectus supplement or post effective amendment;

(j) Make reasonably available for inspection by the Investor, any underwriter participating in any disposition pursuant to the Registration Statement, and any attorney, accountant or other agent retained by the Investor or any such underwriter all relevant financial and other records, pertinent corporate documents and properties

of the Company and its Subsidiary, and cause the Company's officers, directors and employees to supply all information reasonably requested by the Investor or any such underwriter, attorney, accountant or agent in connection with the Registration Statement, in each case, as is customary for similar due diligence examinations; provided, however, that all records, information and documents that are designated in writing by the Company, in good faith, as confidential, proprietary or containing any nonpublic information shall be kept confidential by the Investor and any such underwriter, attorney, accountant or agent (pursuant to an appropriate confidentiality agreement in the case of any such holder or agent), unless such disclosure is made pursuant to judicial process in a court proceeding (after first giving the Company an opportunity promptly to seek a protective order or otherwise limit the scope of the information sought to be disclosed) or is required by law, or such records, information or documents become available to the public generally or through a third party not in violation of an accompanying obligation of confidentiality; and provided, further, that, if the foregoing inspection and information gathering would otherwise disrupt the Company's conduct of its business, such inspection and information gathering shall, to the maximum extent possible, be coordinated on behalf of the Investor and the other parties entitled thereto by one firm of counsel designated by and on behalf of the majority in interest of the Investor and other parties;

(k) In connection with any offering, make such representations and warranties to the Investor and to the underwriters if an underwritten offering, in form, substance and scope as are customarily made by a company to underwriters in secondary underwritten offerings;

(l) In connection with any underwritten offering, deliver such documents and certificates as may be reasonably required by the underwriters;

(m) Cooperate with the Investor to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Registration Statement, which certificates shall, if required under the terms of this Agreement, be free of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as the Investor may request and maintain a transfer agent for the Common Stock;

(n) Use its commercially reasonable efforts to cause all Registrable Securities covered by the Registration Statement to be listed or qualified for trading on the principal Trading Market, if any, on which the Common Stock is traded or listed on the Effective Date of the Registration Statement; and

(o) Unless and to the extent that such Plan of Distribution requires modification due to inaccuracy due to changes in the plan of distribution of Investor, or due to a change in SEC regulations, to use the Plan of Distribution attached hereto as Exhibit B in each Prospectus and Registration Statement.

Section 1.3. **Obligations and Acknowledgements of the Investor**. In connection with the registration of the Registrable Securities, the Investor shall have the following obligations and hereby make the following acknowledgements:

(a) It shall be a condition precedent to the obligations of the Company to include the Registrable Securities in the Registration Statement that the Investor (i) shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and (ii) shall execute such documents in connection with such registration as the Company may reasonably request. At least five Business Days prior to the first anticipated filing date of a Registration Statement, the Company shall notify the Investor of the information the Company requires from the Investor (the "**Requested Information**") if the Investor elects to have any of its Registrable Securities included in the Registration Statement. If at least two Business Days prior to the anticipated filing date the Company has not received the Requested Information from the Investor, then the Company may file the Registration Statement without including any Registrable Securities of the Investor and the Company shall have no further obligations under this Agreement to the Investor after such Registration Statement has been declared effective. If the Investor notifies the Company and provides the Company the information required hereby prior to the time the Registration Statement is declared effective, the Company will file an amendment to the Registration Statement that includes the Registrable Securities of the Investor; provided, however, that the Company shall not be required to file such amendment to the Registration Statement at any time less than five Business Days prior to the Effectiveness Date.

(b) The Investor agrees to cooperate with the Company in connection with the preparation and filing of a Registration Statement hereunder, unless the Investor has notified the Company in writing of her election to exclude all of its Registrable Securities from such Registration Statement;

(c) The Investor agrees that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 1.2(e) or 1.2(f), the Investor shall immediately discontinue her disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 1.2(e) and, if so directed by the Company, the Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Investor's possession (other than one copy of any documents not filed with the SEC for evidentiary purposes), of the Prospectus covering such Registrable Securities current at the time of receipt of such notice; and

Section 1.4. **Expenses of Registration**. All expenses (other than underwriting discounts and commissions and the fees and expenses of the Investor's counsel) incurred in connection with registrations, filings or qualifications pursuant to this

Agreement, including, without limitation, all registration, listing, and qualifications fees, printing and engraving fees, accounting fees, and the fees and disbursements of counsel for the Company, shall be borne by the Company.

Section 1.5. **Accountant's Letter**. If the Investor proposes to engage in an underwritten offering, the Company shall deliver to the Investor, at the Company's expense, a letter dated as of the effective date of each Registration Statement or Post-Effective Amendment thereto, from the independent public accountants retained by the Company, addressed to the underwriters and to the Investor, in form and substance as is customarily given in an underwritten public offering, provided that such seller has made such representations and furnished such undertakings as the independent public accountants may reasonably require;

Section 1.6. **Indemnification and Contribution**

(a) **Indemnification by the Company**. The Company shall indemnify and hold harmless the Investor and each underwriter, if any, which facilitates the disposition of Registrable Securities, and each of their respective officers and directors and each Person who controls such underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such Person being sometimes hereinafter referred to as an "**Indemnified Person**") from and against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, not misleading, or arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Prospectus or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Company hereby agrees to reimburse such Indemnified Person for all reasonable legal and other expenses incurred by them in connection with investigating or defending any such action or claim as and when such expenses are incurred; provided, however, that the Company shall not be liable to any such Indemnified Person in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon (i) an untrue statement or alleged untrue statement made in, or an omission or alleged omission from, such Registration Statement or Prospectus in reliance upon and in conformity with written information furnished to the Company by such Indemnified Person expressly for use therein or (ii) in the case of the occurrence of an event of the type specified in Section 1.2(e), the use by the Indemnified Person of an outdated or defective Prospectus after the Company has provided to such Indemnified Person an updated Prospectus correcting the untrue statement or alleged untrue statement or omission or alleged omission giving rise to such loss, claim, damage or liability.

(b) **Indemnification by Investor**. The Investor agrees, as a consequence of the inclusion of any of her Registrable Securities in a Registration Statement to (i) indemnify and hold harmless the Company, its directors (including any person who, with his or her consent, is named in the Registration Statement as a director nominee of the Company), its officers who sign any Registration Statement and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or such other persons may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (A) an untrue statement or alleged untrue statement of a material fact contained in such Registration Statement or Prospectus or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in light of the circumstances under which they were made, in the case of the Prospectus), not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by the Investor expressly for use therein or (B) the use by the Investor of an outdated Prospectus from and after receipt by the Investor of a notice pursuant to Section 1.2(e), and (ii) reimburse the Company for any legal or other expenses incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Investor shall not be liable under this Section 1.6(b) for any amount in excess of the net proceeds paid to the Investor in respect of Registrable Securities sold by it.

(c) **Notice of Claims, etc**. Promptly after receipt by a Person seeking indemnification pursuant to this Section 1.6 (an "**Indemnified Party**") of written notice of any investigation, claim, proceeding or other action in respect of which indemnification is being sought (each, a "**Claim**"), the Indemnified Party promptly shall notify the Person against whom indemnification pursuant to this Section 1.6 is being sought (the "**Indemnifying Party**") of the commencement thereof; but the omission to so notify the Indemnifying Party shall not relieve it from any liability that it otherwise may have to the Indemnified Party, except to the extent that the Indemnifying Party is materially prejudiced and forfeits substantive rights and defenses by reason of such failure. In connection with any Claim as to which both the Indemnifying Party and the Indemnified Party are parties, the Indemnifying Party shall be entitled to assume the defense thereof. Notwithstanding the assumption of the defense of any Claim by the Indemnifying Party, the Indemnified Party shall have the right to employ separate legal counsel and to participate in the defense of such Claim, and the Indemnifying Party shall bear the reasonable fees, out of pocket costs and expenses of such separate legal counsel to the Indemnified Party if (and only if): (i) the Indemnifying Party shall have agreed to pay such fees, costs and expenses, (ii) the Indemnified Party shall reasonably have concluded that representation of the Indemnified Party by the Indemnifying Party by the same legal counsel would not be appropriate due to actual or, as reasonably determined by legal counsel to the

Indemnified Party, potentially differing interests between such parties in the conduct of the defense of such Claim, or if there may be legal defenses available to the Indemnified Party that are in addition to or disparate from those available to the Indemnifying Party (other than that the Indemnified Party is entitled to be indemnified by the Indemnifying Party), or (iii) the Indemnifying Party shall have failed to employ legal counsel reasonably satisfactory to the Indemnified Party within a reasonable period of time after notice of the commencement of such Claim. If the Indemnified Party employs separate legal counsel in circumstances other than as described in the preceding sentence, the fees, costs and expenses of such legal counsel shall be borne exclusively by the Indemnified Party. Except as provided above, the Indemnifying Party shall not, in connection with any Claim in the same jurisdiction, be liable for the fees and expenses of more than one firm of counsel for the Indemnified Party (together with appropriate local counsel). The Indemnified Party shall not, without the prior written consent of the Indemnifying Party (which consent shall not unreasonably be withheld), settle or compromise any Claim or consent to the entry of any judgment that does not include an unconditional release of the Indemnifying Party from all liabilities with respect to such Claim or judgment or contain any admission of wrongdoing.

(d) **Contribution**. If the indemnification provided for in this Section 1.6 is unavailable to or insufficient to hold harmless an Indemnified Party in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the Indemnified Party in connection with the statements or omissions or alleged statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such Indemnifying Party or by such Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 1.6(d) were determined by pro rata allocation (even if the Investor or any underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 1.6(d). The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) **Limitation on Investor's Obligations**. Notwithstanding any other provision of this Section 1.6, in no event shall the Investor have any liability under this Section 1.6 for any amounts in excess of the dollar amount of the proceeds actually received by the Investor from the sale of Registrable Securities (after deducting any fees, discounts and commissions applicable thereto) pursuant to any Registration Statement under which such Registrable Securities are registered under the Securities Act.

(f) **Other Liabilities**. The obligations of the parties under this Section 1.6 shall be in addition to any liability which such party may otherwise have to any Indemnified Person and the obligations of any Indemnified Person under this Section 1.6 shall be in addition to any liability which such Indemnified Person may otherwise have to any other party. The remedies provided in this Section 1.6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an indemnified party at law or in equity.

Section 1.7. **Rule 144**. With a view to making available to the Investor the benefits of Rule 144 or any successor thereto, until the shares are eligible for sale without volume limitations, the Company agrees to use its best efforts to:

(i) comply with the provisions of paragraph (c)(1) of Rule 144 or any successor thereto; and

(ii) file with the Commission in a timely manner all reports and other documents required to be filed by the Company pursuant to Section 13 or 15(d) under the Exchange Act; and, if at any time it is not required to file such reports but in the past had been required to or did file such reports, it will, upon the request of the Investor, make available other information as required by, and so long as necessary to permit sales of, its Registrable Securities pursuant to Rule 144 or any successor thereto.

Section 1.8. **Common Stock Issued Upon Stock Split, etc**. The provisions of this Agreement shall apply to any shares of Common Stock or any other securities issued as a dividend or distribution in respect of the Conversion Shares.

EXHIBIT B

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;

- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

- an exchange distribution in accordance with the rules of the applicable exchange;

- privately negotiated transactions;

- short sales effected after the date the registration statement of which this Prospectus is a part is declared effective by the SEC;

- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;

- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share; and

- a combination of any such methods of sale.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as

selling stockholders under this prospectus. The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be “underwriters” within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are “underwriters” within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

EXHIBIT C

NOTICE OF CONVERSION

[To be completed and signed only upon conversion of Note]

The undersigned, one of the Lenders of and a holder of the Note, along with all of the other Lenders and holders, hereby irrevocably elects to exercise the right to convert it into 1,500,000 shares of common stock of Energy Focus, Inc. in exchange for the full principal face amount of the Note.

_____
(Name of Lender and holder of Note)

_____
(Address of Lender and holder of Note)

_____
(SSN or EIN of Lender and holder of Note)

Date: _____ ___, 20___ Sign: _____
(Signature must conform in all respects to name of Lender shown on face of the Note)

Execution copy

WARRANT ACQUISITION AGREEMENT

This Warrant Acquisition Agreement (this "**Agreement**") is entered into as of December 31, 2009, by and between Energy Focus, Inc., a Delaware corporation (the "**Company**"), and WOODSTONE ENERGY, LLC, a Tennessee limited liability company (the "**Investor**").

RECITALS

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(2) of the Securities Act (as defined below) and Rule 506 promulgated thereunder, the Company desires to issue to the Investor and the Investor desires to acquire from the Company, certain warrants and securities of the Company, as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Investor agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1. **Definitions**. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings indicated in this Section 1.1:

"Action" means any action, suit, inquiry, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation pending or threatened in writing against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency, regulatory authority (federal, state, county, local or foreign), stock market, stock exchange or trading facility.

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144.

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

"Business Day" means any day except Saturday, Sunday and any day which is a federal legal holiday or a day on which banking institutions in the City of New York are authorized or required by law or other governmental action to close.

"Claim" has the meaning set forth in Section 4.6(c).

"Closing" means the closing of the acquisition and issuance of a Warrant pursuant to Article 2.

"Closing Date" means the Business Day immediately following the date on which all of the conditions set forth in Sections 6.1 and 6.2 hereof are satisfied, or such other date as the parties may agree.

"Commission" means the Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.001 per share, and any securities into which such common stock may hereafter be reclassified.

"Common Stock Equivalents" means any securities of the Company or any Subsidiary which entitle the holder thereof to acquire Common Stock at any time, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock or other securities that entitle the holder to receive, directly or indirectly, Common Stock.

"Company Counsel" means Cowden & Humphrey Co. LPA.

"Company Deliverables" has the meaning set forth in Section 2.4.

"Effective Date" means the date that any Registration Statement filed pursuant to Article 4 is first declared effective by the Commission.

"Effectiveness Period" has the meaning set forth in Section 4.1(b).

"Environmental Law" has the meaning set forth in Section 3.1(x).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business, whether or not incorporated, that together with the Company would be deemed to be a single employer for purposes of Section 4001 of ERISA or Sections 414(b), (c), (m), (n) or (o) of the Internal Revenue Code of 1986, as amended.

"Evaluation Date" has the meaning set forth in Section 3.1(r).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exempt Issuance" means the issuance by the Company (a) to employees, officers, directors of, and consultants to, the Company of shares of Common Stock or options for the purchase of shares of Common Stock pursuant to stock option or long-term incentive plans approved by the Board, (b) of shares of Common Stock upon the exercise of Warrants issued hereunder, (c) of shares of Common Stock upon conversion of shares of Series A Preferred Stock, (d) of shares of Common Stock upon exercise of Prior Warrants or conversion of Prior

Convertible Securities, (e) of securities issued pursuant to acquisitions, licensing agreements, or other strategic transactions, (f) of securities issued in connection with equipment leases, real property leases, loans, credit lines, guaranties or similar transactions approved by the Board, (g) of securities issued in connection with join ventures or similar strategic relationships approved by the Board, (h) of securities in a merger, or (i) of securities in a public offering registered under the Securities Act; provided that in the case of securities issued pursuant clauses (e), (f), (g) and (h), the purpose of such issuance may not be primarily to obtain cash financing.

"Filing Date" means the date that is six months after the Closing Date.

"Financial Statements" has the meaning set forth in Section 3.1(h).

"GAAP" means generally accepted accounting principles as in effect as of the date hereof in the United States of America.

"Governmental Authority" has the meaning set forth in Section 3.1(e).

"Hazardous Substance" has the meaning set forth in Section 3.1(x).

"Indemnified Party" has the meaning set forth in Section 4.6(c).

"Indemnified Person" has the meaning set forth in Section 4.6(a).

"Indemnifying Party" has the meaning set forth in Section 4.6(c).

"Intellectual Property Rights" has the meaning set forth in Section 3.1(o).

"Lien" means any lien, charge, encumbrance, security interest, right of first refusal or other restrictions of any kind.

"Material Adverse Effect" means any of (i) a material and adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material and adverse effect on the results of operations, assets, prospects, business or condition (financial or otherwise) of the Company and the Subsidiary, taken as a whole, or (iii) a material impairment of the Company's ability to perform on a timely basis its obligations under any Transaction Document.

"OFAC" has the meaning set forth in Section 3.1(aa).

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Post-Effective Amendment" means a post-effective amendment to the Registration Statement.

"Post-Effective Amendment Filing Deadline" means the seventh Business Day after the Registration Statement ceases to be effective pursuant to applicable securities laws due to the

passage of time or the occurrence of an event requiring the Company to file a Post-Effective Amendment.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Prospectus" has the meaning set forth in Section 4.3.

"Registrable Securities" means the Warrant Shares issuable to the Investor; provided, however, that the Investor shall not be required to exercise the Warrant in order to have the Shares covered by it included in any Registration Statement.

"Registration Period" means the period commencing on the date hereof and ending on the date on which all of the Registrable Securities may be sold to the public without registration and without volume or manner restrictions under the Securities Act in reliance on Rule 144.

"Registration Statement" means a registration statement filed on the appropriate Form with, and declared effective by, the Commission under the Securities Act and covering the resale by the Investor of the Registrable Securities.

"Requested Information" has the meaning set forth in Section 4.3(a).

"Required Effectiveness Date" means the earlier of (i) the date that is eight months after the Closing Date without SEC review or eleven months in the event of an SEC review process, or, in the case of the registration of Cut Back Shares (as defined in Section 4.1(a)), eleven months after the Restriction Termination Date or (ii) five Business Days after receipt by the Company from the Commission of notice of "no review" of the Registration Statement.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"SEC Reports" has the meaning set forth in Section 3.1(h).

"Securities" means the Warrant and the Warrant Shares.

"Securities Act" means the Securities Act of 1933, as amended.

"Shares" means the shares of Common Stock issuable to the Investor.

"Subsidiary" means any "significant subsidiary" as defined in Rule 1-02(w) of Regulation S X promulgated by the Commission under the Exchange Act.

"Trading Day" means (i) a day on which the Common Stock is traded on a Trading Market, or (ii) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then listed or quoted on the OTC Bulletin Board, a day on

which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

"Trading Market" means whichever of the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, or the Nasdaq Over-the-Counter Market on which the Common Stock is listed or traded on the date in question.

"Transaction Documents" means this Agreement, the Warrant and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Warrant" means the Common Stock Purchase Warrant, in the form of Exhibit A, which is issuable to the Investor at the Closing.

"Warrant Shares" means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE 2

ISSUE AND SALE

Section 2.1. **Issuance of Securities at the Closing**. (a) Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with applicable law, the Company agrees to issue to the Investor, and the Investor agrees to accept from the Company, a Warrant in the form of Exhibit A to purchase 600,000 shares of Common Stock.

(b) Notwithstanding any other provision of the Warrant or this Agreement to the contrary, the Investor shall have no right to purchase any Warrant Shares upon exercise of the Warrant unless and until the Company and/or its affiliates have received at least $10 million by June 30, 2013 under accepted and executed contracts or purchase orders from Investor. Investor shall be entitled to exercise warrants to purchase 400,000 shares of Common Stock upon reaching the threshold of $10 million and shall be entitled to exercise warrants to purchase 200,000 additional shares of Common Stock upon reaching the threshold of $15 million. The Company reserves the right to initially accept or reject the individual contracts or purchase orders from Holder which may be applied towards the threshold attainment.

Section 2.2. **Consideration**. As consideration for the issuance of the Warrant being acquired at the Closing, the Investor shall on the Closing Date take all actions required of it.

Section 2.3. **Delivery of Warrant**. At the Closing, the Company shall take all actions required of it to (i) issue to the Investor the Warrant and (ii) execute and deliver to the transfer agent for the Common Stock irrevocable instructions to issue to the Investor the Warrant.

Section 2.4. **Additional Closing Deliveries**. At the Closing, the Company shall deliver or cause to be delivered to the Investor the following (the "**Company Deliverables**"):

(i) Irrevocable instructions to the Company's transfer agent as to the reservation and issuance of the Warrant Shares; and

(ii) A good standing certificate of the Company issued by the Secretary of State of the State of Delaware dated as of a recent date.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Section 3.1. **Representations and Warranties of the Company**. The Company hereby makes the following representations and warranties to the Investor:

(a) **Subsidiaries**. The Company has no direct or indirect Subsidiaries other than as disclosed to Investor.

(b) **Organization and Qualification**. Each of the Company and each Subsidiary is duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and each Subsidiary is duly qualified to conduct its respective business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, and no proceedings have been instituted in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, such power and authority or qualification.

(c) **Authorization; Enforcement**. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its obligations thereunder. The execution and delivery of each of the Transaction Documents by the Company and the consummation by it of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company and no further corporate action is required by the Company in connection therewith. Each Transaction Document has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(d) **No Conflicts**. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other

organizational or charter documents, or (ii) conflict with, or constitute a breach or default (or an event that with notice or lapse of time or both would become a breach or default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, or result in the imposition of any Lien upon any of the material properties or assets of the Company or of any Subsidiary pursuant to, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(e) **Filings, Consents and Approvals**. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority (a "**Governmental Authority**") or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents and the consummation of the transactions contemplated thereby, other than (i) the filing of a Notice of Sale of Securities on Form D with the Commission under Regulation D of the Securities Act, (ii) filings required under applicable state securities laws, (iii) the filing with the Commission of one or more Registration Statements in accordance with the requirements of Article 4 of this Agreement, and (iv) the submission to the NASDAQ Stock Market LLC of a Notification: Listing of Additional Shares.

(f) **Issuance of the Securities**. The Company has reserved and set aside from its duly authorized capital stock a sufficient number of shares of Common Stock to satisfy in full the Company's obligations to issue the Warrant Shares upon exercise of the Warrants. The Warrant Shares are duly authorized and, when issued and paid for upon exercise of the Warrants in accordance with their terms, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens, other than Liens created by the Investor and those imposed by applicable securities laws.

(g) **Capitalization**. The authorized capital stock of the Company consists of 30,000,000 shares of Common Stock and no shares of Preferred Stock, par value $.0001, of which no shares have been designed Series A Preferred Stock and no shares are undesignated. As of the close of business on November 12, 2009, 19,892,941 shares of Common Stock were issued and outstanding, all of which are validly issued, fully-paid and non-assessable. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except pursuant to outstanding options granted to directors, employees, and consultants of the Company, to outstanding warrants to purchase Common Stock, and to the reservation of shares for sale under the Company's Stock Purchase Plan, or as a result of transactions in Securities as contemplated by this Agreement and the Asset Purchase Agreement, there are no outstanding options, warrants, script rights to subscribe to, calls or commitments of any character whatsoever relating

to, or securities, rights or obligations convertible into or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issue and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Investor) and will not result in a right of any holder of Company securities to adjust the exercise or conversion price under such securities. No further approval or authorization of any stockholder, the Board of Directors of the Company or any other Person is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) **SEC Reports; Financial Statements**. The Company has filed all reports required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the twelve months preceding the date hereof (the foregoing materials, being collectively referred to herein as the "**SEC Reports**"). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the Commission promulgated thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company (the "**Financial Statements**") included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such Financial Statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved, except as may be otherwise specified in such Financial Statements or the notes thereto, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal year-end audit adjustments.

(i) **Material Changes**. Except as set forth in the Financial Statements, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities or obligations (contingent or otherwise) other than (A) trade payables, accrued expenses and other liabilities incurred in the ordinary course of business consistent with past practice incurred since the date of the most recent Financial Statements and (B) liabilities incurred in the ordinary course of business not required to be reflected in the Financial Statements pursuant to GAAP or required to be disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting or the identity of its auditors, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans or the Company Stock Options. The Company does not have pending before the Commission any request for confidential treatment of

information. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP.

(j) **Litigation and Investigations**. There is no Action which (i) challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) except as specifically disclosed in the SEC Reports, could, if there were an unfavorable decision, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof (in his capacity as such), is the subject of any pending Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty, except as specifically disclosed in the SEC Reports. To the knowledge of the Company, there is not pending any investigation by the Commission involving the Company or any current or former director or officer of the Company (in his or her capacity as such). The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act. There are no outstanding comments by the staff of the Commission on any filing by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) **Labor Relations**. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company.

(l) **Compliance**. Neither the Company nor any Subsidiary (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body, or (iii) is or has been in violation of any statute, rule or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(m) **Regulatory Permits**. The Company and the Subsidiary possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such permits.

(n) **Title to Assets**. The Company and the Subsidiary have good and marketable title in fee simple to all real property owned by them that is material to their respective businesses and good and marketable title in all personal property owned by them that is material to their respective businesses, in each case free and clear of all Liens, except for Liens that do not materially affect the value of such property and do not materially interfere with the

use made and proposed to be made of such property by the Company and the Subsidiary. All real property and facilities held under lease by the Company and the Subsidiary are held by them under leases of which the Company and the Subsidiary are in material compliance, except as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(o) **Patents and Trademarks**. The Company and the Subsidiary have, or have valid rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, licenses and other similar rights that are necessary or material for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect (collectively, the "**Intellectual Property Rights**"). No claims or Actions have been made or filed by any Person against the Company to the effect that Intellectual Property Rights used by the Company or any Subsidiary violate or infringe upon the rights of such claimant. To the knowledge of the Company, after commercially reasonable investigation, all of the Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights or by the Company of the Intellectual Property Rights of any other Person.

(p) **Insurance**. The Company and the Subsidiary are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are prudent and customary in the businesses in which the Company and the Subsidiary are engaged. The Company has no reason to believe that it will not be able to renew its and the Subsidiary's existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business on terms consistent with the market for the Company's and such Subsidiaries' respective lines of business.

(q) **Transactions With Affiliates and Employees**. Except as set forth in the SEC Reports, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

(r) **Sarbanes-Oxley; Internal Accounting Controls**. The Company is in material compliance with all provisions of the Sarbanes-Oxley Act of 2002 (including the rules and regulations of the Commission adopted thereunder) which are applicable to it as of the Closing Date. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the filing date of the most recently filed periodic report under the Exchange Act (such date, the "**Evaluation Date**"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no

significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Exchange Act), or to the Company's knowledge, in other factors that could significantly affect the Company's internal controls.

(s) **Certain Fees**. No brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Investor shall have no obligation with respect to any fees or with respect to any claims (other than such fees or commissions owed by the Investor pursuant to written agreements executed by the Investor which fees or commissions shall be the sole responsibility of the Investor) made by or on behalf of any Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by this Agreement.

(t) **Certain Registration Matters**. Assuming the accuracy of the Investor's representations and warranties set forth in Section 3.2(b)-(e), no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Investor under the Transaction Documents and the Asset Purchase Agreement.

(u) **Investment Company**. The Company is not, and is not an Affiliate of, and immediately following the Closing will not have become, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(v) **No Additional Agreements**. The Company does not have any agreement or understanding with the Investor with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents and the Asset Purchase Agreement.

(w) **Full Disclosure**. The SEC Reports and the Company's representations and warranties set forth in this Agreement, taken together, are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or Investor's agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Investor will rely on the foregoing representation in effecting transactions in securities of the Company. The Company acknowledges and agrees that the Investor does not make or has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof or in the Asset Purchase Agreement.

(x) **Environmental Matters**. To the Company's knowledge: (i) the Company and its Subsidiary have complied with all applicable Environmental Laws, except for such noncompliance as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect; (ii) after commercially reasonable investigation, the properties currently owned or operated by Company (including soils, groundwater, surface water, buildings or other structures) are not contaminated with any Hazardous Substances; (iii)

after commercially reasonable investigation, the properties formerly owned or operated by Company or its Subsidiary were not contaminated with Hazardous Substances during the period of ownership or operation by Company and its Subsidiary; (iv) Company and its Subsidiary are not subject to any material liability for any Hazardous Substance disposal or contamination on any third party property; (v) Company and its Subsidiary have not received any written notice, demand, letter, claim or request for information alleging that Company and its Subsidiary may be in violation of or liable under any Environmental Law; and (vi) Company and its Subsidiary are not subject to any orders, decrees, injunctions or other arrangements with any Governmental Authority or subject to any indemnity or other agreement with any third party relating to liability under any Environmental Law or relating to Hazardous Substances which could, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

As used in this Agreement, the term "**Environmental Law**" means any federal, state, local or foreign law, regulation, order, decree, permit, authorization, opinion, common law or agency requirement relating to: (A) the protection, investigation or restoration of the environment, health and safety, or natural resources; (B) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance or (C) noise, odor, wetlands, pollution, contamination or any injury or threat of injury to persons or property.

As used in this Agreement, the term "**Hazardous Substance**" means any substance that is: (i) listed, classified or regulated pursuant to any Environmental Law; (ii) any petroleum product or by-product, asbestos-containing material, polychlorinated biphenyls, radioactive materials or radon; or (iii) any other substance which is the subject of regulatory action by any Governmental Authority pursuant to any Environmental Law.

(y) **Taxes**. The Company and its Subsidiary have filed all necessary federal, state and foreign income and franchise tax returns when due (or obtained appropriate extensions for filing) and have paid or accrued all taxes shown as due thereon, and the Company has no knowledge of a tax deficiency which has been or might be asserted or threatened against it or any Subsidiary which would have a Material Adverse Effect.

(z) **ERISA**. Neither the Company nor any ERISA Affiliate maintains, contributes to or has any liability or contingent liability with respect to any employee benefit plan subject to ERISA.

(aa) **Foreign Assets Control Regulations and Anti-Money Laundering**.

(i) **OFAC**. Neither the issuance of the Warrants and Warrant Shares to the Investor, nor the use of the respective proceeds thereof, shall cause the Investor to violate the U.S. Bank Secrecy Act, as amended, and any applicable regulations thereunder or any of the sanctions programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**") of the United States Department of Treasury, any regulations promulgated thereunder by OFAC or under any affiliated or successor governmental or quasi-governmental office, bureau or agency and any enabling legislation or executive order relating thereto. Without limiting the foregoing, neither the Company nor the Subsidiary (i) is a person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 200l Blocking Property and Prohibiting Transactions

With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order.

(ii) **Patriot Act**. The Company and the Subsidiary are in compliance, in all material respects, with the USA PATRIOT Act. No part of the proceeds of the sale of the Warrant Shares hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(bb) **Acknowledgment Regarding Investor's Trading Activity**. Except as expressly set forth herein, it is understood and acknowledged by the Company that, except to the extent required by applicable law: (i) the Investor has not been asked by the Company to agree, nor has the Investor agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) that past or future open market or other transactions by the Investor, specifically including, without limitation, short sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities; (iii) that the Investor, and counter-parties in "derivative" transactions to which the Investor is a party, directly or indirectly, presently may have a "short" position in the Common Stock; and (iv) that the Investor shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that, to the extent permitted by applicable law (y) the Investor may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Warrant Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents, except to the extent that any such activities violate the provisions of applicable law.

(cc) **Regulation M Compliance**. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

(dd) **Form S-3 Eligibility**. The Company is eligible to register the resale of the Warrant Shares for resale by the Investor on Form S-3 promulgated under the Securities Act; provided, however, that no violation of this Section 3.1(dd) shall be deemed to have occurred in

the event that the SEC imposes any restriction on the registration of the Warrant Shares pursuant to Rule 415 as contemplated in Section 4.1(a) below.

Section 3.2. **Representations and Warranties of the Investor**. The Investor hereby represents and warrants to the Company as follows:

(a) **Authority**. This Agreement has been duly executed by the Investor, and when delivered by the Investor in accordance with terms hereof, will constitute the valid and legally binding obligation of the Investor, enforceable against Investor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(b) **Own Account**. The Investor is acquiring the Securities as principal for Investor's own account and not with a view to or for distributing or reselling such Securities or any part thereof, without prejudice, however, to the Investor's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws. The Investor does not have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities.

(c) **Investor Status**. The Investor is an "accredited investor" as defined in Rule 501(a) under the Securities Act. The Investor is not a registered broker-dealer under Section 15 of the Exchange Act or associated or affiliated with such a broker-dealer. The Investor has a principal place of business at the address listed for Investor on the signature pages hereto.

(d) **Access to Information**. The Investor acknowledges that she has reviewed the SEC Reports and has been afforded: (i) the opportunity to ask such questions as she has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and the Subsidiary and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable Investor to evaluate Investor's investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(e) **General Solicitation**. The Investor is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) **Disclosure**. The Investor acknowledges and agrees that the Company neither makes nor has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.1.

(g) **Regulation M Compliance**. The Investor has not, and to Investor's knowledge no one acting on Investor's behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

ARTICLE 4

REGISTRATION RIGHTS

Section 4.1. **Shelf Registration**.

(a) As promptly as possible, and in any event on or prior to the Filing Date, the Company shall prepare and file with the Commission a "shelf" Registration Statement covering the resale of all Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. If for any reason (including, without limitation, the Commission's interpretation of Rule 415) the Commission does not permit all of the Registrable Securities to be included in such Registration Statement, then the Company shall prepare and file with the Commission one or more separate Registration Statements with respect to any such Registrable Securities not included with the initial Registration Statements, as soon as allowed under SEC Regulations and is commercially practicable. The Registration Statement shall be on a Form S-3; in the event Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form in accordance herewith and (ii) attempt to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statements then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act or requires the Investor to be named as an "underwriter", the Company shall use its commercially reasonable best efforts to persuade the SEC that the offering contemplated by the Registration Statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that the Investor is not an "underwriter". The Investor shall have the right to participate or have their counsel participate in any meetings or discussions with the SEC regarding the SEC's position and to comment or have Investor's counsel comment on any written submission made to the SEC with respect thereto, and to have such comments relayed to the SEC with the consent of the Company, not to be unreasonably withheld. No such written submission shall be made to the SEC to which the Investor's counsel reasonably objects. In the event that, despite the Company's commercially reasonable efforts and compliance with the terms of this Section 2(e), the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the "**Cut Back Shares**") and/or (ii) with the consent of the Investor's counsel, not to be unreasonably withheld, agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company's compliance with the requirements of Rule 415; provided, however, that

the Company shall not agree to name the Investor as an "underwriter" in such Registration Statement without the prior written consent of the Investor (collectively, the "**SEC Restrictions**"). No liquidated damages shall accrue on or as to any Cut Back Shares until such time as the Company is able, using commercially reasonable efforts, to effect the filing of an additional Registration Statement with respect to the Cut Back Shares in accordance with any SEC Restrictions (such date, the "**Restriction Termination Date**"). From and after the Restriction Termination Date, all of the provisions of this Article 4 (including the liquidated damages provisions) shall again be applicable to the Cut Back Shares; provided, however, that for such purposes, references to the Filing Date shall be deemed to be the Restriction Termination Date.

(b) The Company shall use its best efforts to cause each Registration Statement filed hereunder to be declared effective by the Commission as promptly as possible after the filing thereof, but in any event prior to the Required Effectiveness Date, and shall use its best efforts to keep the Registration Statement continuously effective under the Securities Act until the earlier of (i) the fifth anniversary of the Effective Date, (ii) the date when all Registrable Securities covered by such Registration Statement have been sold publicly, or (iii) the date on which the Registrable Securities are eligible for sale without volume limitation within a three-month period pursuant to Rule 144 or any successor thereto (the "**Effectiveness Period**"). The Company shall notify the Investor in writing promptly (and in any event within one Business Day) after receiving notification from the Commission that the Registration Statement has been declared effective.

(c) As promptly as possible, and in any event no later than the Post-Effective Amendment Filing Deadline, the Company shall prepare and file with the Commission a Post-Effective Amendment. The Company shall use its best efforts to cause the Post-Effective Amendment to be declared effective by the Commission as promptly as possible after the filing thereof. The Company shall notify the Investor in writing promptly (and in any event within one Business Day) after receiving notification from the Commission that the Post-Effective Amendment has been declared effective.

(d) If the Company issues to the Investor any Common Stock pursuant to the Transaction Documents that is not included in the initial Registration Statement, then the Company shall file an additional Registration Statement covering such number of shares of Common Stock on or prior to the Filing Date and shall use it best efforts, but in no event later than the Required Effectiveness Date, to cause such additional Registration Statement to be declared effective by the Commission.

(e) The Registration Statement shall not include any securities other than the Registrable Securities without the prior written consent of the Investor.

Section 4.2. **Registration Process**. In connection with the registration of the Registrable Securities pursuant to Section 4.1, the Company shall:

(a) Prepare and file with the Commission the Registration Statement and such amendments (including post effective amendments) to the Registration Statement and supplements to the prospectus included therein (a "**Prospectus**") as the Company may deem

necessary or appropriate and take all lawful action such that the Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading and that the Prospectus forming part of the Registration Statement, and any amendment or supplement thereto, does not at any time during the Registration Period include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.;

(b) Comply with the provisions of the Securities Act with respect to the Registrable Securities covered by the Registration Statement until the end of the Effectiveness Period;

(c) Prior to the filing with the Commission of the Registration Statement (including any amendments thereto) and the distribution or delivery of any Prospectus (including any supplements thereto), provide draft copies thereof to the Investor and reflect in such documents all such comments as the Investor (and Investor's counsel) reasonably may propose and furnish to the Investor and Investor's legal counsel identified to the Company (i) promptly after the same is prepared and publicly distributed, filed with the Commission, or received by the Company, one copy of the Registration Statement, each Prospectus, and each amendment or supplement thereto, and (ii) such number of copies of the Prospectus and all amendments and supplements thereto and such other documents, as the Investor may reasonably request in order to facilitate the disposition of the Registrable Securities;

(d) (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions as the Investor reasonably requests, (ii) prepare and file in such jurisdictions such amendments (including post effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof at all times during the Registration Period, (iii) take all such other lawful actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all such other lawful actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (A) qualify to do business in any jurisdiction where it would not otherwise be required to qualify, (B) subject itself to general taxation in any such jurisdiction or (C) file a general consent to service of process in any such jurisdiction;

(e) As promptly as practicable after becoming aware of such event, notify the Investor of the occurrence of any event, as a result of which the Prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and promptly prepare an amendment to the Registration Statement and supplement to the Prospectus to correct such untrue statement or omission, and deliver a number of copies of such supplement and amendment to the Investor as the Investor may reasonably request;

(f) As promptly as practicable after becoming aware of such event, notify the Investor (or, in the event of an underwritten offering, the managing underwriters) of the issuance by the Commission of any stop order or other suspension of the effectiveness of the Registration Statement and take all lawful action to effect the withdrawal, rescission or removal of such stop order or other suspension;

(g) Take all such other lawful actions reasonably necessary to expedite and facilitate the disposition by the Investor of his Registrable Securities in accordance with the intended methods therefor provided in the Prospectus which are customary under the circumstances;

(h) Make generally available to its security holders as soon as practicable, but in any event not later than 18 months after the Effective Date of the Registration Statement, an earnings statement of the Company and its Subsidiary complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder;

(i) In the event of an underwritten offering, promptly include or incorporate in a Prospectus supplement or post effective amendment to the Registration Statement such information as the underwriters reasonably agree should be included therein and to which the Company does not reasonably object and make all required filings of such Prospectus supplement or post effective amendment as soon as practicable after it is notified of the matters to be included or incorporated in such Prospectus supplement or post effective amendment;

(j) Make reasonably available for inspection by the Investor, any underwriter participating in any disposition pursuant to the Registration Statement, and any attorney, accountant or other agent retained by the Investor or any such underwriter all relevant financial and other records, pertinent corporate documents and properties of the Company and its Subsidiary, and cause the Company's officers, directors and employees to supply all information reasonably requested by the Investor or any such underwriter, attorney, accountant or agent in connection with the Registration Statement, in each case, as is customary for similar due diligence examinations; provided, however, that all records, information and documents that are designated in writing by the Company, in good faith, as confidential, proprietary or containing any nonpublic information shall be kept confidential by the Investor and any such underwriter, attorney, accountant or agent (pursuant to an appropriate confidentiality agreement in the case of any such holder or agent), unless such disclosure is made pursuant to judicial process in a court proceeding (after first giving the Company an opportunity promptly to seek a protective order or otherwise limit the scope of the information sought to be disclosed) or is required by law, or such records, information or documents become available to the public generally or through a third party not in violation of an accompanying obligation of confidentiality; and provided, further, that, if the foregoing inspection and information gathering would otherwise disrupt the Company's conduct of its business, such inspection and information gathering shall, to the maximum extent possible, be coordinated on behalf of the Investor and the other parties entitled thereto by one firm of counsel designated by and on behalf of the majority in interest of the Investor and other parties;

(k) In connection with any offering, make such representations and warranties to the Investor and to the underwriters if an underwritten offering, in form, substance and scope as are customarily made by a company to underwriters in secondary underwritten offerings;

(l) In connection with any underwritten offering, deliver such documents and certificates as may be reasonably required by the underwriters;

(m) Cooperate with the Investor to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Registration Statement, which certificates shall, if required under the terms of this Agreement, be free of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as the Investor may request and maintain a transfer agent for the Common Stock;

(n) Use its commercially reasonable efforts to cause all Registrable Securities covered by the Registration Statement to be listed or qualified for trading on the principal Trading Market, if any, on which the Common Stock is traded or listed on the Effective Date of the Registration Statement; and

(o) Unless and to the extent that such Plan of Distribution requires modification due to inaccuracy due to changes in the plan of distribution of Investor, or due to a change in SEC regulations, to use the Plan of Distribution attached hereto as Exhibit B in each Prospectus and Registration Statement.

Section 4.3. **Obligations and Acknowledgements of the Investor**. In connection with the registration of the Registrable Securities, the Investor shall have the following obligations and hereby make the following acknowledgements:

(a) It shall be a condition precedent to the obligations of the Company to include the Registrable Securities in the Registration Statement that the Investor (i) shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and (ii) shall execute such documents in connection with such registration as the Company may reasonably request. At least five Business Days prior to the first anticipated filing date of a Registration Statement, the Company shall notify the Investor of the information the Company requires from the Investor (the "**Requested Information**") if the Investor elects to have any of its Registrable Securities included in the Registration Statement. If at least two Business Days prior to the anticipated filing date the Company has not received the Requested Information from the Investor, then the Company may file the Registration Statement without including any Registrable Securities of the Investor and the Company shall have no further obligations under this Article 4 to the Investor after such Registration Statement has been declared effective. If the Investor notifies the Company and provides the Company the information required hereby prior to the time the Registration Statement is declared effective, the Company will file an amendment to the Registration Statement that includes the Registrable Securities of the Investor; provided, however, that the Company shall not be required to file such amendment to the Registration Statement at any time less than five Business Days prior to the Effectiveness Date.

(b) The Investor agrees to cooperate with the Company in connection with the preparation and filing of a Registration Statement hereunder, unless the Investor has notified the Company in writing of Investor's election to exclude all of its Registrable Securities from such Registration Statement;

(c) The Investor agrees that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 4.2(e) or 4.2(f), the Investor shall immediately discontinue Investor's disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 4.2(e) and, if so directed by the Company, the Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Investor's possession (other than one copy of any documents not filed with the SEC for evidentiary purposes), of the Prospectus covering such Registrable Securities current at the time of receipt of such notice; and

Section 4.4. **Expenses of Registration**. All expenses (other than underwriting discounts and commissions and the fees and expenses of the Investor's counsel) incurred in connection with registrations, filings or qualifications pursuant to this Article 4, including, without limitation, all registration, listing, and qualifications fees, printing and engraving fees, accounting fees, and the fees and disbursements of counsel for the Company, shall be borne by the Company.

Section 4.5. **Accountant's Letter**. If the Investor proposes to engage in an underwritten offering, the Company shall deliver to the Investor, at the Company's expense, a letter dated as of the effective date of each Registration Statement or Post-Effective Amendment thereto, from the independent public accountants retained by the Company, addressed to the underwriters and to the Investor, in form and substance as is customarily given in an underwritten public offering, provided that such seller has made such representations and furnished such undertakings as the independent public accountants may reasonably require;

Section 4.6. **Indemnification and Contribution**

(a) **Indemnification by the Company**. The Company shall indemnify and hold harmless the Investor and each underwriter, if any, which facilitates the disposition of Registrable Securities, and each of their respective officers and directors and each Person who controls such underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such Person being sometimes hereinafter referred to as an "**Indemnified Person**") from and against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, not misleading, or arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Prospectus or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the

circumstances under which they were made, not misleading; and the Company hereby agrees to reimburse such Indemnified Person for all reasonable legal and other expenses incurred by them in connection with investigating or defending any such action or claim as and when such expenses are incurred; provided, however, that the Company shall not be liable to any such Indemnified Person in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon (i) an untrue statement or alleged untrue statement made in, or an omission or alleged omission from, such Registration Statement or Prospectus in reliance upon and in conformity with written information furnished to the Company by such Indemnified Person expressly for use therein or (ii) in the case of the occurrence of an event of the type specified in Section 4.2(e), the use by the Indemnified Person of an outdated or defective Prospectus after the Company has provided to such Indemnified Person an updated Prospectus correcting the untrue statement or alleged untrue statement or omission or alleged omission giving rise to such loss, claim, damage or liability.

(b) **Indemnification by Investor**. The Investor agrees, as a consequence of the inclusion of any of Investor Registrable Securities in a Registration Statement to (i) indemnify and hold harmless the Company, its directors (including any person who, with his or her consent, is named in the Registration Statement as a director nominee of the Company), its officers who sign any Registration Statement and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or such other persons may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (A) an untrue statement or alleged untrue statement of a material fact contained in such Registration Statement or Prospectus or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in light of the circumstances under which they were made, in the case of the Prospectus), not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by the Investor expressly for use therein or (B) the use by the Investor of an outdated Prospectus from and after receipt by the Investor of a notice pursuant to Section 4.2(e), and (ii) reimburse the Company for any legal or other expenses incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Investor shall not be liable under this Section 4.6(b) for any amount in excess of the net proceeds paid to the Investor in respect of Registrable Securities sold by it.

(c) **Notice of Claims, etc**. Promptly after receipt by a Person seeking indemnification pursuant to this Section 4.6 (an "**Indemnified Party**") of written notice of any investigation, claim, proceeding or other action in respect of which indemnification is being sought (each, a "**Claim**"), the Indemnified Party promptly shall notify the Person against whom indemnification pursuant to this Section 4.6 is being sought (the "**Indemnifying Party**") of the commencement thereof; but the omission to so notify the Indemnifying Party shall not relieve it from any liability that it otherwise may have to the Indemnified Party, except to the extent that the Indemnifying Party is materially prejudiced and forfeits substantive rights and defenses by reason of such failure. In connection with any Claim as to which both the Indemnifying Party and the Indemnified Party are parties, the Indemnifying Party shall be entitled to assume the

defense thereof. Notwithstanding the assumption of the defense of any Claim by the Indemnifying Party, the Indemnified Party shall have the right to employ separate legal counsel and to participate in the defense of such Claim, and the Indemnifying Party shall bear the reasonable fees, out of pocket costs and expenses of such separate legal counsel to the Indemnified Party if (and only if): (i) the Indemnifying Party shall have agreed to pay such fees, costs and expenses, (ii) the Indemnified Party shall reasonably have concluded that representation of the Indemnified Party by the Indemnifying Party by the same legal counsel would not be appropriate due to actual or, as reasonably determined by legal counsel to the Indemnified Party, potentially differing interests between such parties in the conduct of the defense of such Claim, or if there may be legal defenses available to the Indemnified Party that are in addition to or disparate from those available to the Indemnifying Party (other than that the Indemnified Party is entitled to be indemnified by the Indemnifying Party), or (iii) the Indemnifying Party shall have failed to employ legal counsel reasonably satisfactory to the Indemnified Party within a reasonable period of time after notice of the commencement of such Claim. If the Indemnified Party employs separate legal counsel in circumstances other than as described in the preceding sentence, the fees, costs and expenses of such legal counsel shall be borne exclusively by the Indemnified Party. Except as provided above, the Indemnifying Party shall not, in connection with any Claim in the same jurisdiction, be liable for the fees and expenses of more than one firm of counsel for the Indemnified Party (together with appropriate local counsel). The Indemnified Party shall not, without the prior written consent of the Indemnifying Party (which consent shall not unreasonably be withheld), settle or compromise any Claim or consent to the entry of any judgment that does not include an unconditional release of the Indemnifying Party from all liabilities with respect to such Claim or judgment or contain any admission of wrongdoing.

(d) **Contribution**. If the indemnification provided for in this Section 4.6 is unavailable to or insufficient to hold harmless an Indemnified Party in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the Indemnified Party in connection with the statements or omissions or alleged statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such Indemnifying Party or by such Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.6(d) were determined by pro rata allocation (even if the Investor or any underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 4.6(d). The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section

11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) **Limitation on Investor's Obligations**. Notwithstanding any other provision of this Section 4.6, in no event shall the Investor have any liability under this Section 4.6 for any amounts in excess of the dollar amount of the proceeds actually received by the Investor from the sale of Registrable Securities (after deducting any fees, discounts and commissions applicable thereto) pursuant to any Registration Statement under which such Registrable Securities are registered under the Securities Act.

(f) **Other Liabilities**. The obligations of the parties under this Section 4.6 shall be in addition to any liability which such party may otherwise have to any Indemnified Person and the obligations of any Indemnified Person under this Section 4.6 shall be in addition to any liability which such Indemnified Person may otherwise have to any other party. The remedies provided in this Section 4.6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an indemnified party at law or in equity.

Section 4.7. **Rule 144**. With a view to making available to the Investor the benefits of Rule 144 or any successor thereto, until the shares are eligible for sale without volume limitations, the Company agrees to use its best efforts to:

(i) comply with the provisions of paragraph (c)(1) of Rule 144 or any successor thereto; and

(ii) file with the Commission in a timely manner all reports and other documents required to be filed by the Company pursuant to Section 13 or 15(d) under the Exchange Act; and, if at any time it is not required to file such reports but in the past had been required to or did file such reports, it will, upon the request of the Investor, make available other information as required by, and so long as necessary to permit sales of, its Registrable Securities pursuant to Rule 144 or any successor thereto.

Section 4.8. **Common Stock Issued Upon Stock Split, etc**. The provisions of this Article 4 shall apply to any shares of Common Stock or any other securities issued as a dividend or distribution in respect of the Warrant Shares or the Shares covered by the Asset Purchase Agreement.

ARTICLE 5

OTHER AGREEMENTS OF THE PARTIES

Section 5.1. **Certificates; Legends**.

(a) The Securities may only be transferred in compliance with state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, or (iii) to an Affiliate of the Investor, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer

does not require registration of such transferred Securities under the Securities Act or applicable state securities laws. In the event of a private transfer of the Securities the Transferee shall be required to execute a counterpart to this Agreement, agreeing to be bound by (and shall have the benefits of) the terms hereof other than those set forth in Article 2 hereof, and such Transferee shall be deemed to be an "Investor" for purposes of this Agreement.

(b) The certificate representing the Warrant to be delivered at the Closing and the certificates evidencing the Warrant Shares to be delivered upon exercise of the Warrant will contain appropriate legends referring to restrictions on transfer relating to the registration requirements of the Securities Act and applicable state securities laws.

(c) In connection with any sale or disposition of the Securities by the Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable shares and upon compliance by the Investor with the requirements of this Agreement, the Company shall or, in the case of Common Stock, shall cause the transfer agent for the Common Stock (the "**Transfer Agent**") to issue replacement certificates representing the Securities sold or disposed of without restrictive legends. Upon the earlier of (i) registration for resale pursuant to the Registration Rights Agreement or (ii) the Warrant Shares becoming freely tradable without restriction pursuant to Rule 144 the Company shall (A) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall reissue a certificate representing shares of Common Stock without legends upon receipt by such Transfer Agent of the legended certificates for such shares, and, in the case of a proposed sale pursuant to Rule 144, a customary representation by the Investor that the conditions required to freely sell the shares of Common Stock represented thereby without restriction pursuant to Rule 144 have been satisfied, and (B) cause its counsel to deliver to the Transfer Agent one or more opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act. From and after the earlier of such dates, upon the Investor's written request, the Company shall promptly cause certificates evidencing the Investor's Securities to be replaced with certificates which do not bear such restrictive legends, and Warrant Shares subsequently issued upon due exercise of the Warrants shall not bear such restrictive legends, provided the provisions of either clause (i) or clause (ii) above, as applicable, are satisfied with respect to such Warrant Shares. When the Company is required to cause an unlegended certificate to replace a previously issued legended certificate, if: (1) the unlegended certificate is not delivered to the Investor within three (3) Business Days of submission by the Investor of a legended certificate and supporting documentation to the Transfer Agent as provided above and (2) prior to the time such unlegended certificate is received by the Investor, the Investor, or any third party on behalf of the Investor or for the Investor's account, purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Investor of shares represented by such certificate (a "**Buy-In**"), then the Company shall pay in cash to the Investor (for costs incurred either directly by such Purchaser or on behalf of a third party) the amount by which the total purchase price paid for Common Stock as a result of the Buy-In (including brokerage commissions, if any) exceeds the proceeds received by the Investor as a result of the sale to which such Buy-In relates. The Investor shall provide the Company written notice indicating the amounts payable to the Investor in respect of the Buy-In.

Section 5.2. **Integration**. The Company has not and shall not, and shall use its best efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy

or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the issuance of the Securities to the Investor, or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market in a manner that would require stockholder approval of the sale of the securities to the Investor.

Section 5.3. **Securities Laws Disclosure; Publicity**. By 5:00 p.m. (New York time) on the Trading Day following the execution of this Agreement, and by 5:00 p.m. (New York time) on the Trading Day following the Closing Date, the Company shall issue press releases disclosing the material terms of the transactions contemplated hereby and the Closing, and the Company shall file Current Reports on Form 8-K disclosing the material terms of the Transaction Documents and the Closing. In addition, the Company will make such other filings and notices in the manner and time required by the Commission and the Trading Market on which the Common Stock is listed.

Section 5.4. **Use of Proceeds**. The Company shall use the net proceeds from the sale of the Securities hereunder (i) for working capital purposes, (ii) for use in the Company's business, or (iii) for investment in new technologies related to the Company's business (including without limitation through the acquisition of other companies).

Section 5.5. **Prospectus Delivery Requirements**. The Investor agrees that the Investor will not effect any sale, transfer or other disposition of any Securities except pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in Section 4.1 is predicated upon the Company's reliance upon this understanding.

Section 5.6. **Reservation of Common Stock**. From and after the Closing Date, the Company shall reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue the Warrant Shares pursuant to any exercise of the Warrants.

Section 5.7. **Disclosure of Information**. Except upon the prior written consent of the Investor, the Company shall not disclose any material non-public information to the Investor or Investor's counsel. Any such disclosure shall be made pursuant to an in accordance with a customary non-disclosure agreement between the Company and the Investor.

Section 5.8. **Agreement not to Exercise Rights.** The Investor agrees that the Investor will not exercise any rights under this Agreement, including without limitation the right to exercise the Warrant or the right to assign this Agreement or the Warrant, without first having received written notice from the Company that this Agreement and the Warrant have been approved by the Company's Board of Directors or a committee of the Board.

ARTICLE 6

CONDITIONS PRECEDENT TO CLOSING

Section 6.1. **Conditions Precedent to the Obligations of the Investor to Acquire Securities**. The obligation of the Investor to acquire Securities is subject to the satisfaction or waiver by the Investor, at or before the Closing, of each of the following conditions:

(a) **Representations and Warranties**. The representations and warranties of the Company contained herein are true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of such Closing Date;

(b) **Performance**. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing;

(c) **No Injunction**. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents;

(d) **No Adverse Changes**. Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably could have or result in a Material Adverse Effect;

(e) **Company Deliverables**. The Company shall have delivered the Company Deliverables in accordance with Section 2.4.

Section 6.2. **Conditions Precedent to the Obligations of the Company to Issue Securities**. The obligation of the Company to issue Securities is subject to the satisfaction or waiver by the Company, at or before the Closing, of each of the following conditions:

(a) **Representations and Warranties**. The representations and warranties of the Investor contained herein shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of such date;

(b) **Performance**. The Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Investor at or prior to the Closing;

(c) **No Injunction**. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

ARTICLE 7

MISCELLANEOUS

Section 7.1. **Fees and Expenses**. Each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of the Transaction Documents.

Section 7.2. **Entire Agreement**. The Transaction Documents, together with the Exhibits thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents and exhibits.

Section 7.3. **Notices**. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the facsimile number specified in this Section prior to 6:30 p.m. on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Business Day or later than 6:30 p.m. on any Business Day, (c) the Business Day following the date of transmission, if sent by a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses for such notices and communications shall be as follows:

If to the Company:	Energy Focus, Inc. 32000 Aurora Road Solon, Ohio 44139 Facsimile: 440.519.1038 Attention: Mr. Joseph G. Kaveski, Chief Executive Officer
With a copy to:	Cowden & Humphrey Co. LPA 4600 Euclid Avenue, Suite 400 Cleveland, Ohio 44103-3758 Facsimile: 216.241.2881 Attention: Mr. Gerald W. Cowden
If to the Investor:	Woodstone Energy, LLC 1244 Gallatin Pike South Madison, Tennessee 37115 Facsimile No.: 615.883.0988
With a copy to:	John I. Harris, III Of counsel Schulman, Leroy & Bennett, PC P.O. Box 190676 501 Union Street, Seventh Floor Nashville, Tennessee 37219 Facsimile No.: 615.254-5407

or such other address as may be designated by the Investor or the Company in writing, in the same manner, by such Person.

Section 7.4. **Amendments; Waivers**. No provision of this Agreement may be waived or amended except in a written instrument signed by the Company and the Investor. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

Section 7.5. **Termination**. This Agreement may be terminated prior to the Closing by written agreement of the Investor and the Company. Upon a termination in accordance with this Section 7.5, the Company and the Investor shall have no further obligation or liability (including as arising from such termination) to the other, provided that any liabilities arising prior to such termination shall not be affected by the termination.

Section 7.6. **Construction**. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any of the Transaction Documents.

Section 7.7. **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties and their successors, and permitted assigns. Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party.

Section 7.8. **No Third-Party Beneficiaries**. This Agreement is intended for the benefit of the parties hereto, and their heirs, representatives, successors, and permitted assigns, and their affiliated Persons that are parties to the Asset Purchase Agreement, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

Section 7.9. **Governing Law; Jurisdiction**. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and of the United States, without giving effect to the doctrine of conflicts of laws. The parties each agree that the federal and state courts located within the State of Delaware, the State of Ohio, and the State of Tennessee shall have nonexclusive jurisdiction as to all matters, actions, claims or disputes arising out of this Agreement or the transactions contemplated hereby.

Section 7.10. **Survival**. The representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery of the Securities; provided, however, that the representations and warranties shall expire one month after the Company files its Annual Report on Form 10-K for the period ending December 31, 2010.

Section 7.11. **Execution**. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof, notwithstanding any subsequent failure or refusal of the signatory to deliver an original executed in ink.

Section 7.12. **Severability**. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefore, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

Section 7.13. **Replacement of Securities**. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefore, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities. If a replacement certificate or instrument evidencing any Securities is requested due to a mutilation thereof, the Company may require delivery of such mutilated certificate or instrument as a condition precedent to any issuance of a replacement.

Section 7.14. **Remedies**. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Investor and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that, except as expressly set forth herein with respect to liquidated damages, monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agrees to waive in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first indicated above.

COMPANY:

ENERGY FOCUS, INC.

By: /s/ Joseph G. Kaveski
Name: Joseph G. Kaveski
Its: Chief Executive Officer

INVESTOR:

WOODSTONE ENERGY, LLC

By: /s/ Douglas Woodward
Name: Douglas Woodward
Its: Chief Executive Officer

EXHIBIT A

Form of Warrant

EXHIBIT B

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;

- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

- an exchange distribution in accordance with the rules of the applicable exchange;

- privately negotiated transactions;

- short sales effected after the date the registration statement of which this Prospectus is a part is declared effective by the SEC;

- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;

- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share; and

- a combination of any such methods of sale.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares

of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be “underwriters” within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are “underwriters” within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

BONDING SUPPORT AGREEMENT

THIS BONDING SUPPORT AGREEMENT (this "Agreement") is made as of December 29, 2009 by and between Energy Focus, Inc., a Delaware corporation (the "Company"), and [_____ __. ___], a [___] resident ("Investor").

Recitals

A. The Company is in the process of acquiring all of the member interests of Stones River Companies, LLC, a Tennessee limited liability company ("SRC"). SRC is in the turnkey lighting retrofit business. In the regular course of its business, SRC must routinely provide performance bonds to secure the payment and performance of its obligations on its projects. As part of the acquisition of the member interests of SRC, the Company must provide extended surety capacity (the "Bond") by The Hanover Insurance Company through its agent, the Oswald Companies (collectively, the "Bonding Company"), of $5,000,000.00 single/$10,000,000.00 aggregate coverage, to secure the obligations of SRC on its projects. The Company has requested Investor's assistance in supporting the Bond and Investor is willing to do so.

B. As collateral for the Bond, Investor is willing to provide an irrevocable, twenty-four-month, cash collateral deposit (the "Deposit") or financial institution letter of credit (the "Letter of Credit") in the amount of $[___,000.00] on terms reasonably acceptable to (i) the Bonding Company, (ii) the Company, and (iii) Investor (collectively, the "Relevant Parties"). In order to induce Investor to provide the Deposit or the Letter of Credit, the Company is willing (i) to issue to Investor or its designee (the "Recipient") [___,000] five-year warrants exercisable at $0.01 per share to permit the Recipient to purchase [___,000] shares of the Company's Common Stock, and (ii) to provide to Investor the other consideration and covenants set forth below. The Company's shares of Common Stock are listed for trading on the Nasdaq Global Market.

Agreements

In consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. **Terms of the Transaction.** (a) As collateral for the issuance of the Bond by the Bonding Company, Investor shall provide an irrevocable, twenty-four-month Deposit in the minimum amount of $[___,000.00] on terms reasonably acceptable to the Relevant Parties. The Bonding Company shall hold the Deposit in a segregated account, in the name of the Investor, and earmarked for bond support for the Company. In the alternative, the Investor may provide an irrevocable, twenty-four-month Letter of Credit in favor of the Bonding Company, in the same amount, on the Bonding Company's form, and at a financial institution reasonably acceptable to the Relevant Parties to serve as collateral for the Bond.

(b) As consideration for the provision of the Deposit or the Letter of Credit, the Company shall issue to the Recipient a five-year Common Stock Purchase Warrant (the

"Warrant") covering warrants to purchase [___,000] shares of its Common Stock at $0.01 per share pursuant to a Warrant Acquisition Agreement of even date. The Warrant is not exercisable unless and until approved by the Company's shareholders at its annual meeting in 2010 or at a special shareholder meeting in 2010 called for that purpose. If shareholders do not approve the Warrant in 2010 at a special or the annual meeting, the Warrant shall terminate. If the Company replaces and releases, or simply releases, the Deposit or the Letter of Credit within six (6) months of the date of this Agreement, the number of warrants covered by the Warrant shall reduce to a number of warrants equal to the product of (i) the number of full months elapsed since the date of this Agreement times (ii) [_____] [total number of warrants divided by twelve].

(c) The Company shall pay Investor interest on the outstanding principal amount of the Deposit or the face amount of the Letter of Credit at the simple interest rate of twelve and one-half percent (12.5%) per year quarterly in arrears, beginning on the first day of the calendar quarter following the date of this Agreement, and at maturity.

(d) If Investor has provided a Letter of Credit, as further consideration for the provision of the Letter of Credit, the Company agrees to reimburse Investor for any monies that Investor is required to pay, and pays, to the Letter of Credit financial institution within three (3) months of Investor's payment to the financial institution, to reimburse the financial institution for any monies that the financial institution is required to pay, and pays, to the Bonding Company as draws under the Letter of Credit.

(e) If Investor has provided a Deposit, as further consideration for the provision of the Deposit, the Company agrees to reimburse Investor for any monies that Investor is required to pay, and pays, to the Bonding Company as draws on the Deposit, within three (3) months of Investor's payment to the Bonding Company.

(f) The Company shall reimburse Investor for the payment by Investor of any reasonable letter of credit fee that the Letter of Credit financial institution may charge for issuing the Letter of Credit.

(g) The obligations of the Company under this Agreement shall be secured by the collateral covered by a Stock Pledge Agreement between the Company and Investor of even date.

(h) Upon (i) an event of default under any Senior Indebtedness, or (ii) any dissolution, winding up, or liquidation of the Company or of its wholly-owned, British subsidiary, Crescent Lighting, Ltd. (" Crescent"), whether or not in a bankruptcy, insolvency, or receivership proceeding, the Company shall not pay, and the Investor shall not be entitled to receive, any of the principal of and interest on the Deposit unless and until the Senior Indebtedness shall have been paid or discharged. For purposes of this Section 1(h), "Senior Indebtedness" shall mean the principal of and unpaid accrued interest on (x) all indebtedness of the Company and Crescent to banks, insurance companies, or other financial institutions regularly engaged in the business of lending money, which is money borrowed by the Company or Crescent, whether or not secured, and (y) any such indebtedness or any debentures, notes, or

other evidence of indebtedness issued in exchange for such Senior Indebtedness or any indebtedness arising from the satisfaction of such Senior Indebtedness by a guarantor.

(i) If a "Liquidity Event" occurs before the full return of the principal amount of the Deposit, or the expiration of the Letter of Credit, at maturity twenty-four (24) months from the date of this Agreement, as may be extended according to the terms of this Agreement, the Company shall pay Investor upon the closing of the Liquidity Event an interest premium amount equal to one hundred percent (100%) of the interest on the Deposit or the Letter of Credit then accrued and unpaid under Section 1(c) of this Agreement. As used in this Section 1(i), the term "Liquidity Event" means (x) the Company shall have merged into or consolidated with another corporation, or merged another corporation into the Company, on a basis whereby less than fifty percent (50%) of the total voting power of the surviving corporation is represented by shares held by former shareholders of the Company prior to that merger or consolidation, or (y) the Company shall sell substantially all of its assets, with its assets for this purpose excluding its Fiberstars and United States Commercial units.

(j) The Company shall have the right to replace and release, or simply release, the Deposit or the Letter of Credit to Investor at any time prior to maturity twenty-four (24) months from the date of this Agreement, as may be extended according to the terms of this Agreement, following at least thirty (30) days prior written notice to Investor or with the written consent of Investor, and upon the Company's payment to Investor of twelve (12) months interest at the rate set forth in Section 1(c).

(k) The Company and Investor may extend the term of the Deposit or of the Letter of Credit for an additional twelve (12) months by written agreement no later than eleven (11) months from the date of this Agreement.

Section 2. **Company's Representations and Warranties.** The Company makes the following representations and warranties:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) All corporate action on the part of the Company and its officers, directors and shareholders necessary for the execution, delivery and performance of this Agreement and the Warrant Acquisition Agreement and the authorization, issuance and delivery of the Warrant being issued pursuant to this Agreement and the Warrant Acquisition Agreement has been taken as of the date hereof; provided, however, that Investor shall not have the right to exercise the warrant unless and until the shareholders of the Company have approved it in 2010 at their regular annual meeting or a special meeting held for that purpose.

(c) The Company is not in violation of any applicable statute, rule or regulation adopted, enacted or promulgated by any government or governmental authority the consequence of which would have an adverse effect on consummation of the transactions contemplated by this Agreement in accordance with its terms or a material adverse effect on the Company's business or financial condition.

(d) Neither execution and delivery of this Agreement by the Company nor consummation of the transactions contemplated hereby will (i) violate or conflict with the articles of incorporation or by-laws of the Company, (ii) violate any provisions of law applicable to the Company, or (iii) violate, conflict with or result in a breach of or default under any contract, instrument or other agreement to which the Company is a party or any governmental or judicial order or decree applicable to the Company.

Section 3. **Investor's Representations and Warranties**. Investor makes the following representations and warranties:

(a) Investor is a resident of the State of [_____].

(b) Investor has taken all action that is necessary on its part for the execution, delivery and performance of this Agreement and the Warrant Acquisition Agreement as of the date hereof.

(c) Investor is not in violation of any applicable statute, rule or regulation adopted, enacted or promulgated by any government or governmental authority the consequence of which would have an adverse effect on consummation of the transactions contemplated by this Agreement in accordance with its terms or a material adverse effect on Investor's financial condition.

(d) Neither execution and delivery of this Agreement by Investor nor consummation of the transactions contemplated hereby will (i) violate any provisions of law applicable to Investor, or (ii) violate, conflict with or result in a breach of or default under any contract, instrument or other agreement to which Investor is a party or any governmental or judicial order or decree applicable to Investor.

(e) (i) All documents, records and books of the Company requested by Investor have been made available or delivered to Investor and all questions of Investor relating to this transaction have been answered by the Company; (ii) Investor understands that the Warrant and the shares of Common Stock covered by it (the "Shares") are a speculative investment which involve a high degree of risk of loss by Investor of its investment therein; (iii) it has been offered the opportunity to ask questions of appropriate officers of the Company with respect to its business and affairs, and such officers have answered all such questions to its satisfaction; (iv) its purchase of the Warrant is being made for Investor's own account for investment purposes and with no intention of immediate distribution; (v) Investor has the requisite knowledge and experience in financial and business matters to enable it to evaluate the merits and risks of an investment in the Warrant; (vi) it is aware that the Warrant and each of the Shares may be a "restricted security" within the meaning of such term under Rule 144 of the Rules of the SEC ("Rule 144"), that the Warrant and the Shares may be subject to the resale restrictions of Rule 144 (unless another exemption is available under the Securities Act of 1933, as amended (the "Securities Act")), and that, if Investor at any time is deemed to be an affiliate of the Company, the Warrant and the Shares may be subject to the additional resale restrictions under Rule 144 applicable to affiliates; (vii) it is aware that until the Warrant or the Shares may be registered under the Securities Act, it may be unable to liquidate its investment in them despite a need to do

so; and (viii) it is aware that the Warrant and the Shares may bear a legend conditioning the transfer of them upon the receipt of a satisfactory opinion to the effect that any proposed transfer of them is exempt from registration under the Securities Act, or the like.

(f) Investor is an accredited investor under Rule 501(a) of Regulation D under the Securities Act of 1933 (the "Act").

Section 4. **Brokers Commissions**. Investor will indemnify and hold harmless the Company from the commission, fee or claim of any person, firm or corporation employed or retained or claiming to be employed or retained by Investor to bring about, or to represent it in, the transaction contemplated hereby. The Company will indemnify and hold harmless Investor from the commission, fee or claim of any person, firm or corporation employed or retained by the Company to bring about, or to represent it in, the transaction contemplated hereby.

Section 5. **Amendment and Modification.** The parties hereto may not amend, modify or supplement this Agreement except by a writing signed by both of the parties hereto.

Section 6. **Binding Effect, No Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party shall be entitled to assign its rights hereunder except upon the other party's prior written consent; provided, however, (a) that Company may assign this Agreement in connection with a merger or consolidation involving Company, or a sale of substantially all of Company's assets, so long as the purchaser or assignee assumes Company's obligations under this Agreement, and (b) that Investor may assign this Agreement to a Recipient and in connection with a permitted sale or transfer of the Warrant and the Warrant Acquisition Agreement.

Section 7. **Entire Agreement**. This instrument contains the entire agreement of the parties hereto with respect to the transactions contemplated herein, and supersedes all prior understandings and agreements of the parties with respect to the subject matter hereof.

Section 8. **Headings**. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 9. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

Section 10. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware applicable to contracts made and to be performed therein, without regard to the conflicts of law principles thereof. Each of the parties hereto consents to the jurisdiction of the federal and state courts located in the State of Ohio for any dispute hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ENERGY FOCUS, INC.

By: /s/ Joseph G. Kaveski
Joseph G. Kaveski
Chief Executive Officer

INVESTOR:

[insert name of Investor]

WARRANT ACQUISITION AGREEMENT

This Warrant Acquisition Agreement (this "**Agreement**") is entered into as of December 29, 2009, by and between Energy Focus, Inc., a Delaware corporation (the "**Company**"), and [_____] (the "**Investor**").

RECITALS

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(2) of the Securities Act (as defined below) and Rule 506 promulgated thereunder, the Company desires to issue to the Investor and the Investor desires to acquire from the Company, certain warrants and securities of the Company, as more fully described in this Agreement; this Agreement is entered into pursuant to that certain Bonding Support Agreement of even date between the Company and the Investor (the "Bonding Support Agreement"); capitalized terms used herein without definition are used with the definitions assigned thereto in that Bonding Support Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Investor agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1. **Definitions**. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings indicated in this Section 1.1:

"Action" means any action, suit, inquiry, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation pending or threatened in writing against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency, regulatory authority (federal, state, county, local or foreign), stock market, stock exchange or trading facility.

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144.

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

"Business Day" means any day except Saturday, Sunday and any day which is a federal legal holiday or a day on which banking institutions in the City of New York are authorized or required by law or other governmental action to close.

"Claim" has the meaning set forth in Section 4.6(c).

"Closing" means the closing of the acquisition and issuance of a Warrant pursuant to Article 2.

"Closing Date" means the Business Day immediately following the date on which all of the conditions set forth in Sections 6.1 and 6.2 hereof are satisfied, or such other date as the parties may agree.

"Commission" means the Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.001 per share, and any securities into which such common stock may hereafter be reclassified.

"Common Stock Equivalents" means any securities of the Company or any Subsidiary which entitle the holder thereof to acquire Common Stock at any time, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock or other securities that entitle the holder to receive, directly or indirectly, Common Stock.

"Company Counsel" means Cowden & Humphrey Co. LPA.

"Company Deliverables" has the meaning set forth in Section 2.4.

"Effective Date" means the date that any Registration Statement filed pursuant to Article 4 is first declared effective by the Commission.

"Effectiveness Period" has the meaning set forth in Section 4.1(b).

"Environmental Law" has the meaning set forth in Section 3.1(x).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business, whether or not incorporated, that together with the Company would be deemed to be a single employer for purposes of Section 4001 of ERISA or Sections 414(b), (c), (m), (n) or (o) of the Internal Revenue Code of 1986, as amended.

"Evaluation Date" has the meaning set forth in Section 3.1(r).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exempt Issuance" means the issuance by the Company (a) to employees, officers, directors of, and consultants to, the Company of shares of Common Stock or options for the purchase of shares of Common Stock pursuant to stock option or long-term incentive plans approved by the Board, (b) of shares of Common Stock upon the exercise of Warrants issued hereunder, (c) of shares of Common Stock upon conversion of shares of Series A Preferred Stock, (d) of shares of Common Stock upon exercise of Prior Warrants or conversion of Prior

Convertible Securities, (e) of securities issued pursuant to acquisitions, licensing agreements, or other strategic transactions, (f) of securities issued in connection with equipment leases, real property leases, loans, credit lines, guaranties or similar transactions approved by the Board, (g) of securities issued in connection with join ventures or similar strategic relationships approved by the Board, (h) of securities in a merger, or (i) of securities in a public offering registered under the Securities Act; provided that in the case of securities issued pursuant clauses (e), (f), (g) and (h), the purpose of such issuance may not be primarily to obtain cash financing.

"Filing Date" means the date that is six months after the Closing Date.

"Financial Statements" has the meaning set forth in Section 3.1(h).

"GAAP" means generally accepted accounting principles as in effect as of the date hereof in the United States of America.

"Governmental Authority" has the meaning set forth in Section 3.1(e).

"Hazardous Substance" has the meaning set forth in Section 3.1(x).

"Indemnified Party" has the meaning set forth in Section 4.6(c).

"Indemnified Person" has the meaning set forth in Section 4.6(a).

"Indemnifying Party" has the meaning set forth in Section 4.6(c).

"Intellectual Property Rights" has the meaning set forth in Section 3.1(o).

"Lien" means any lien, charge, encumbrance, security interest, right of first refusal or other restrictions of any kind.

"Material Adverse Effect" means any of (i) a material and adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material and adverse effect on the results of operations, assets, prospects, business or condition (financial or otherwise) of the Company and the Subsidiary, taken as a whole, or (iii) a material impairment of the Company's ability to perform on a timely basis its obligations under any Transaction Document.

"OFAC" has the meaning set forth in Section 3.1(aa).

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Post-Effective Amendment" means a post-effective amendment to the Registration Statement.

"Post-Effective Amendment Filing Deadline" means the seventh Business Day after the Registration Statement ceases to be effective pursuant to applicable securities laws due to the

passage of time or the occurrence of an event requiring the Company to file a Post-Effective Amendment.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Prospectus" has the meaning set forth in Section 4.3.

"Registrable Securities" means the Warrant Shares issuable to the Investor; provided, however, that the Investor shall not be required to exercise the Warrant in order to have the Shares covered by it included in any Registration Statement.

"Registration Period" means the period commencing on the date hereof and ending on the date on which all of the Registrable Securities may be sold to the public without registration and without volume or manner restrictions under the Securities Act in reliance on Rule 144.

"Registration Statement" means a registration statement filed on the appropriate Form with, and declared effective by, the Commission under the Securities Act and covering the resale by the Investor of the Registrable Securities.

"Requested Information" has the meaning set forth in Section 4.3(a).

"Required Effectiveness Date" means the earlier of (i) the date that is eight months after the Closing Date without SEC review or eleven months in the event of an SEC review process, or, in the case of the registration of Cut Back Shares (as defined in Section 4.1(a)), eleven months after the Restriction Termination Date or (ii) five Business Days after receipt by the Company from the Commission of notice of "no review" of the Registration Statement.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"SEC Reports" has the meaning set forth in Section 3.1(h).

"Securities" means the Warrant and the Warrant Shares.

"Securities Act" means the Securities Act of 1933, as amended.

"Shares" means the shares of Common Stock issuable to the Investor.

"Subsidiary" means any "significant subsidiary" as defined in Rule 1-02(w) of Regulation S X promulgated by the Commission under the Exchange Act.

"Trading Day" means (i) a day on which the Common Stock is traded on a Trading Market, or (ii) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then listed or quoted on the OTC Bulletin Board, a day on

which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

"Trading Market" means whichever of the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, or the Nasdaq Over-the-Counter Market on which the Common Stock is listed or traded on the date in question.

"Transaction Documents" means this Agreement, the Warrant and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Warrant" means the Common Stock Purchase Warrant, in the form of Exhibit A, which is issuable to the Investor at the Closing.

"Warrant Shares" means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE 2

ISSUE AND SALE

Section 2.1. **Issuance of Securities at the Closing**. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with applicable law, the Company agrees to issue to the Investor, and the Investor agrees to accept from the Company, a Warrant in the form of Exhibit A to purchase [___,000] shares of Common Stock.

Section 2.2. **Consideration**. As consideration for the issuance of the Warrant being acquired at the Closing, the Investor shall on the Closing Date take all actions required of it.

Section 2.3. **Delivery of Warrant**. At the Closing, the Company shall take all actions required of it to (i) issue to the Investor the Warrant and (ii) execute and deliver to the transfer agent for the Common Stock irrevocable instructions to issue to the Investor the Warrant.

Section 2.4. **Additional Closing Deliveries**. At the Closing, the Company shall deliver or cause to be delivered to the Investor the following (the "**Company Deliverables**"):

(i) Irrevocable instructions to the Company's transfer agent as to the reservation and issuance of the Warrant Shares; and

(ii) A good standing certificate of the Company issued by the Secretary of State of the State of Delaware dated as of a recent date.

Section 2.5. **Representations and Warranties of the Company**. The Company hereby makes the following representations and warranties to the Investor:

(a) **Subsidiaries**. The Company has no direct or indirect Subsidiaries other than as disclosed to Investor.

(b) **Organization and Qualification**. Each of the Company and each Subsidiary is duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and each Subsidiary is duly qualified to conduct its respective business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, and no proceedings have been instituted in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, such power and authority or qualification.

(c) **Authorization; Enforcement**. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its obligations thereunder. The execution and delivery of each of the Transaction Documents by the Company and the consummation by it of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company and no further corporate action is required by the Company in connection therewith[; provided, however, that Investor shall not have the right to exercise the Warrant unless and until the shareholders of the Company have approved this Agreement and the Warrant in 2010 at their regular annual meeting or a special meeting held for that purpose]. Each Transaction Document has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(d) **No Conflicts**. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a breach or default (or an event that with notice or lapse of time or both would become a breach or default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, or result in the imposition of any Lien upon any of the material properties or assets of the Company or of any Subsidiary pursuant to, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could

not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(e) **Filings, Consents and Approvals**. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority (a "**Governmental Authority**") or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents and the consummation of the transactions contemplated thereby, other than (i) the filing of a Notice of Sale of Securities on Form D with the Commission under Regulation D of the Securities Act, (ii) filings required under applicable state securities laws, (iii) the filing with the Commission of one or more Registration Statements in accordance with the requirements of Article 4 of this Agreement, and (iv) the submission to the NASDAQ Stock Market LLC of a Notification: Listing of Additional Shares.

(f) **Issuance of the Securities**. The Company has reserved and set aside from its duly authorized capital stock a sufficient number of shares of Common Stock to satisfy in full the Company's obligations to issue the Warrant Shares upon exercise of the Warrants. The Warrant Shares are duly authorized and, when issued and paid for upon exercise of the Warrants in accordance with their terms, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens, other than Liens created by the Investor and those imposed by applicable securities laws.

(g) **Capitalization**. The authorized capital stock of the Company consists of 30,000,000 shares of Common Stock and no shares of Preferred Stock, par value $.0001, of which no shares have been designed Series A Preferred Stock and no shares are undesignated. As of the close of business on December 31, 2009, 21,077,859 shares of Common Stock were issued and outstanding, all of which are validly issued, fully-paid and non-assessable. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except pursuant to outstanding options granted to directors, officers, employees, and consultants of the Company, to outstanding warrants to purchase Common Stock, and to the reservation of shares for sale under the Company's Stock Purchase Plan, or as a result of transactions in Securities as contemplated by this Agreement and the Member Interest Purchase Agreement dated as of December 31, 2009 relating to the acquisition of Stones River Companies, LLC, there are no outstanding options, warrants, script rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issue and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Investor) and will not result in a right of any holder of Company securities to adjust the exercise or conversion price under such securities. No further approval or authorization of any stockholder, the Board of Directors of the Company or any other Person is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's

capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) **SEC Reports; Financial Statements**. The Company has filed all reports required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the twelve months preceding the date hereof (the foregoing materials, being collectively referred to herein as the "**SEC Reports**"). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the Commission promulgated thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company (the "**Financial Statements**") included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such Financial Statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved, except as may be otherwise specified in such Financial Statements or the notes thereto, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal year-end audit adjustments.

(i) **Material Changes**. Except as set forth in the Financial Statements, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities or obligations (contingent or otherwise) other than (A) trade payables, accrued expenses and other liabilities incurred in the ordinary course of business consistent with past practice incurred since the date of the most recent Financial Statements and (B) liabilities incurred in the ordinary course of business not required to be reflected in the Financial Statements pursuant to GAAP or required to be disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting or the identity of its auditors, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans or the Company Stock Options. The Company does not have pending before the Commission any request for confidential treatment of information. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP.

(j) **Litigation and Investigations**. There is no Action which (i) challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) except as specifically disclosed in the SEC Reports, could, if there were an unfavorable decision, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof (in his capacity as such), is the subject of any pending Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty, except as specifically disclosed in the SEC Reports. To the knowledge of the Company, there is not

pending any investigation by the Commission involving the Company or any current or former director or officer of the Company (in his or her capacity as such). The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act. There are no outstanding comments by the staff of the Commission on any filing by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) **Labor Relations**. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company.

(l) **Compliance**. Neither the Company nor any Subsidiary (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body, or (iii) is or has been in violation of any statute, rule or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(m) **Regulatory Permits**. The Company and the Subsidiary possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such permits.

(n) **Title to Assets**. The Company and the Subsidiary have good and marketable title in fee simple to all real property owned by them that is material to their respective businesses and good and marketable title in all personal property owned by them that is material to their respective businesses, in each case free and clear of all Liens, except for Liens that do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiary. All real property and facilities held under lease by the Company and the Subsidiary are held by them under leases of which the Company and the Subsidiary are in material compliance, except as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(o) **Patents and Trademarks**. The Company and the Subsidiary have, or have valid rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, licenses and other similar rights that are necessary or material for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could, individually or in the aggregate, have or reasonably be

expected to result in a Material Adverse Effect (collectively, the "**Intellectual Property Rights**"). No claims or Actions have been made or filed by any Person against the Company to the effect that Intellectual Property Rights used by the Company or any Subsidiary violate or infringe upon the rights of such claimant. To the knowledge of the Company, after commercially reasonable investigation, all of the Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights or by the Company of the Intellectual Property Rights of any other Person.

(p) **Insurance**. The Company and the Subsidiary are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are prudent and customary in the businesses in which the Company and the Subsidiary are engaged. The Company has no reason to believe that it will not be able to renew its and the Subsidiary's existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business on terms consistent with the market for the Company's and such Subsidiaries' respective lines of business.

(q) **Transactions With Affiliates and Employees**. Except as set forth in the SEC Reports, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

(r) **Sarbanes-Oxley; Internal Accounting Controls**. The Company is in material compliance with all provisions of the Sarbanes-Oxley Act of 2002 (including the rules and regulations of the Commission adopted thereunder) which are applicable to it as of the Closing Date. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the filing date of the most recently filed periodic report under the Exchange Act (such date, the "**Evaluation Date**"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Exchange Act), or to the Company's knowledge, in other factors that could significantly affect the Company's internal controls.

(s) **Certain Fees**. No brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Investor shall have no obligation with respect to any fees or with respect to any claims (other than such fees or commissions owed by the Investor pursuant to written agreements executed by the Investor which fees or commissions shall be the sole responsibility of the

Investor) made by or on behalf of any Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by this Agreement.

(t) **Certain Registration Matters**. Assuming the accuracy of the Investor's representations and warranties set forth in Section 3.2(b)-(e), no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Investor under the Transaction Documents and the Asset Purchase Agreement.

(u) **Investment Company**. The Company is not, and is not an Affiliate of, and immediately following the Closing will not have become, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(v) **No Additional Agreements**. The Company does not have any agreement or understanding with the Investor with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents and the Asset Purchase Agreement.

(w) **Full Disclosure**. The SEC Reports and the Company's representations and warranties set forth in this Agreement, taken together, are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or Investor's agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Investor will rely on the foregoing representation in effecting transactions in securities of the Company. The Company acknowledges and agrees that the Investor does not make or has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof or in the Asset Purchase Agreement.

(x) **Environmental Matters**. To the Company's knowledge: (i) the Company and its Subsidiary have complied with all applicable Environmental Laws, except for such noncompliance as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect; (ii) after commercially reasonable investigation, the properties currently owned or operated by Company (including soils, groundwater, surface water, buildings or other structures) are not contaminated with any Hazardous Substances; (iii) after commercially reasonable investigation, the properties formerly owned or operated by Company or its Subsidiary were not contaminated with Hazardous Substances during the period of ownership or operation by Company and its Subsidiary; (iv) Company and its Subsidiary are not subject to any material liability for any Hazardous Substance disposal or contamination on any third party property; (v) Company and its Subsidiary have not received any written notice, demand, letter, claim or request for information alleging that Company and its Subsidiary may be in violation of or liable under any Environmental Law; and (vi) Company and its Subsidiary are not subject to any orders, decrees, injunctions or other arrangements with any Governmental Authority or subject to any indemnity or other agreement with any third party relating to liability

under any Environmental Law or relating to Hazardous Substances which could, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

As used in this Agreement, the term "**Environmental Law**" means any federal, state, local or foreign law, regulation, order, decree, permit, authorization, opinion, common law or agency requirement relating to: (A) the protection, investigation or restoration of the environment, health and safety, or natural resources; (B) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance or (C) noise, odor, wetlands, pollution, contamination or any injury or threat of injury to persons or property.

As used in this Agreement, the term "**Hazardous Substance**" means any substance that is: (i) listed, classified or regulated pursuant to any Environmental Law; (ii) any petroleum product or by-product, asbestos-containing material, polychlorinated biphenyls, radioactive materials or radon; or (iii) any other substance which is the subject of regulatory action by any Governmental Authority pursuant to any Environmental Law.

(y) **Taxes**. The Company and its Subsidiary have filed all necessary federal, state and foreign income and franchise tax returns when due (or obtained appropriate extensions for filing) and have paid or accrued all taxes shown as due thereon, and the Company has no knowledge of a tax deficiency which has been or might be asserted or threatened against it or any Subsidiary which would have a Material Adverse Effect.

(z) **ERISA**. Neither the Company nor any ERISA Affiliate maintains, contributes to or has any liability or contingent liability with respect to any employee benefit plan subject to ERISA.

(aa) **Foreign Assets Control Regulations and Anti-Money Laundering**.

(i) **OFAC**. Neither the issuance of the Warrants and Warrant Shares to the Investor, nor the use of the respective proceeds thereof, shall cause the Investor to violate the U.S. Bank Secrecy Act, as amended, and any applicable regulations thereunder or any of the sanctions programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**") of the United States Department of Treasury, any regulations promulgated thereunder by OFAC or under any affiliated or successor governmental or quasi-governmental office, bureau or agency and any enabling legislation or executive order relating thereto. Without limiting the foregoing, neither the Company nor the Subsidiary (i) is a person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 200l Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order.

(ii) **Patriot Act**. The Company and the Subsidiary are in compliance, in all material respects, with the USA PATRIOT Act. No part of the proceeds of the sale of the Warrant Shares hereunder will be used, directly or indirectly, for any payments to any

governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(bb) **Acknowledgment Regarding Investor's Trading Activity**. Except as expressly set forth herein, it is understood and acknowledged by the Company that, except to the extent required by applicable law: (i) the Investor has not been asked by the Company to agree, nor has the Investor agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) that past or future open market or other transactions by the Investor, specifically including, without limitation, short sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities; (iii) that the Investor, and counter-parties in "derivative" transactions to which the Investor is a party, directly or indirectly, presently may have a "short" position in the Common Stock; and (iv) that the Investor shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that, to the extent permitted by applicable law (y) the Investor may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Warrant Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents, except to the extent that any such activities violate the provisions of applicable law.

(cc) **Regulation M Compliance**. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

(dd) **Form S-3 Eligibility**. The Company is eligible to register the resale of the Warrant Shares for resale by the Investor on Form S-3 promulgated under the Securities Act; provided, however, that no violation of this Section 3.1(dd) shall be deemed to have occurred in the event that the SEC imposes any restriction on the registration of the Warrant Shares pursuant to Rule 415 as contemplated in Section 4.1(a) below.

Section 2.6. **Representations and Warranties of the Investor**. The Investor hereby represents and warrants to the Company as follows:

(a) **Authority**. This Agreement has been duly executed by the Investor, and when delivered by the Investor in accordance with terms hereof, will constitute the valid and legally binding obligation of the Investor, enforceable against Investor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency,

reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(b) **Own Account**. The Investor is acquiring the Securities as principal for Investor's own account and not with a view to or for distributing or reselling such Securities or any part thereof, without prejudice, however, to the Investor's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws. The Investor does not have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities.

(c) **Investor Status**. The Investor is an "accredited investor" as defined in Rule 501(a) under the Securities Act. The Investor is not a registered broker-dealer under Section 15 of the Exchange Act or associated or affiliated with such a broker-dealer. The Investor has a principal place of business at the address listed for Investor on the signature pages hereto.

(d) **Access to Information**. The Investor acknowledges that the Investor has reviewed the SEC Reports and has been afforded: (i) the opportunity to ask such questions as the Investor has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and the Subsidiary and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable Investor to evaluate Investor's investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(e) **General Solicitation**. The Investor is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) **Disclosure**. The Investor acknowledges and agrees that the Company neither makes nor has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.1.

(g) **Regulation M Compliance**. The Investor has not, and to Investor's knowledge no one acting on Investor's behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

ARTICLE 3

REGISTRATION RIGHTS

Section 3.1. **Shelf Registration**.

(a) As promptly as possible, and in any event on or prior to the Filing Date, the Company shall prepare and file with the Commission a "shelf" Registration Statement covering the resale of all Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. If for any reason (including, without limitation, the Commission's interpretation of Rule 415) the Commission does not permit all of the Registrable Securities to be included in such Registration Statement, then the Company shall prepare and file with the Commission one or more separate Registration Statements with respect to any such Registrable Securities not included with the initial Registration Statements, as soon as allowed under SEC Regulations and is commercially practicable. The Registration Statement shall be on a Form S-3; in the event Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form in accordance herewith and (ii) attempt to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statements then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act or requires the Investor to be named as an "underwriter", the Company shall use its commercially reasonable best efforts to persuade the SEC that the offering contemplated by the Registration Statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that the Investor is not an "underwriter". The Investor shall have the right to participate or have their counsel participate in any meetings or discussions with the SEC regarding the SEC's position and to comment or have Investor's counsel comment on any written submission made to the SEC with respect thereto, and to have such comments relayed to the SEC with the consent of the Company, not to be unreasonably withheld. No such written submission shall be made to the SEC to which the Investor's counsel reasonably objects. In the event that, despite the Company's commercially reasonable efforts and compliance with the terms of this Section 2(e), the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the "**Cut Back Shares**") and/or (ii) with the consent of the Investor's counsel, not to be unreasonably withheld, agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company's compliance with the requirements of Rule 415; provided, however, that the Company shall not agree to name the Investor as an "underwriter" in such Registration Statement without the prior written consent of the Investor (collectively, the "**SEC Restrictions**"). No liquidated damages shall accrue on or as to any Cut Back Shares until such time as the Company is able, using commercially reasonable efforts, to effect the filing of an additional Registration Statement with respect to the Cut Back Shares in accordance with any SEC Restrictions (such date, the "**Restriction Termination Date**"). From and after the Restriction Termination Date, all of the provisions of this Article 4 (including the liquidated damages provisions) shall again be applicable to the Cut Back Shares; provided, however, that

for such purposes, references to the Filing Date shall be deemed to be the Restriction Termination Date.

(b) The Company shall use its best efforts to cause each Registration Statement filed hereunder to be declared effective by the Commission as promptly as possible after the filing thereof, but in any event prior to the Required Effectiveness Date, and shall use its best efforts to keep the Registration Statement continuously effective under the Securities Act until the earlier of (i) the fifth anniversary of the Effective Date, (ii) the date when all Registrable Securities covered by such Registration Statement have been sold publicly, or (iii) the date on which the Registrable Securities are eligible for sale without volume limitation within a three-month period pursuant to Rule 144 or any successor thereto (the "**Effectiveness Period**"). The Company shall notify the Investor in writing promptly (and in any event within one Business Day) after receiving notification from the Commission that the Registration Statement has been declared effective.

(c) As promptly as possible, and in any event no later than the Post-Effective Amendment Filing Deadline, the Company shall prepare and file with the Commission a Post-Effective Amendment. The Company shall use its best efforts to cause the Post-Effective Amendment to be declared effective by the Commission as promptly as possible after the filing thereof. The Company shall notify the Investor in writing promptly (and in any event within one Business Day) after receiving notification from the Commission that the Post-Effective Amendment has been declared effective.

(d) If the Company issues to the Investor any Common Stock pursuant to the Transaction Documents that is not included in the initial Registration Statement, then the Company shall file an additional Registration Statement covering such number of shares of Common Stock on or prior to the Filing Date and shall use it best efforts, but in no event later than the Required Effectiveness Date, to cause such additional Registration Statement to be declared effective by the Commission.

(e) The Registration Statement shall not include any securities other than the Registrable Securities without the prior written consent of the Investor.

Section 3.2. **Registration Process**. In connection with the registration of the Registrable Securities pursuant to Section 4.1, the Company shall:

(a) Prepare and file with the Commission the Registration Statement and such amendments (including post effective amendments) to the Registration Statement and supplements to the prospectus included therein (a "**Prospectus**") as the Company may deem necessary or appropriate and take all lawful action such that the Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading and that the Prospectus forming part of the Registration Statement, and any amendment or supplement thereto, does not at any time during the Registration Period include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.;

(b) Comply with the provisions of the Securities Act with respect to the Registrable Securities covered by the Registration Statement until the end of the Effectiveness Period;

(c) Prior to the filing with the Commission of the Registration Statement (including any amendments thereto) and the distribution or delivery of any Prospectus (including any supplements thereto), provide draft copies thereof to the Investor and reflect in such documents all such comments as the Investor (and Investor's counsel) reasonably may propose and furnish to the Investor and Investor's legal counsel identified to the Company (i) promptly after the same is prepared and publicly distributed, filed with the Commission, or received by the Company, one copy of the Registration Statement, each Prospectus, and each amendment or supplement thereto, and (ii) such number of copies of the Prospectus and all amendments and supplements thereto and such other documents, as the Investor may reasonably request in order to facilitate the disposition of the Registrable Securities;

(d) (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions as the Investor reasonably requests, (ii) prepare and file in such jurisdictions such amendments (including post effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof at all times during the Registration Period, (iii) take all such other lawful actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all such other lawful actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (A) qualify to do business in any jurisdiction where it would not otherwise be required to qualify, (B) subject itself to general taxation in any such jurisdiction or (C) file a general consent to service of process in any such jurisdiction;

(e) As promptly as practicable after becoming aware of such event, notify the Investor of the occurrence of any event, as a result of which the Prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and promptly prepare an amendment to the Registration Statement and supplement to the Prospectus to correct such untrue statement or omission, and deliver a number of copies of such supplement and amendment to the Investor as the Investor may reasonably request;

(f) As promptly as practicable after becoming aware of such event, notify the Investor (or, in the event of an underwritten offering, the managing underwriters) of the issuance by the Commission of any stop order or other suspension of the effectiveness of the Registration Statement and take all lawful action to effect the withdrawal, rescission or removal of such stop order or other suspension;

(g) Take all such other lawful actions reasonably necessary to expedite and facilitate the disposition by the Investor of his Registrable Securities in accordance with the intended methods therefor provided in the Prospectus which are customary under the circumstances;

(h) Make generally available to its security holders as soon as practicable, but in any event not later than 18 months after the Effective Date of the Registration Statement, an earnings statement of the Company and its Subsidiary complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder;

(i) In the event of an underwritten offering, promptly include or incorporate in a Prospectus supplement or post effective amendment to the Registration Statement such information as the underwriters reasonably agree should be included therein and to which the Company does not reasonably object and make all required filings of such Prospectus supplement or post effective amendment as soon as practicable after it is notified of the matters to be included or incorporated in such Prospectus supplement or post effective amendment;

(j) Make reasonably available for inspection by the Investor, any underwriter participating in any disposition pursuant to the Registration Statement, and any attorney, accountant or other agent retained by the Investor or any such underwriter all relevant financial and other records, pertinent corporate documents and properties of the Company and its Subsidiary, and cause the Company's officers, directors and employees to supply all information reasonably requested by the Investor or any such underwriter, attorney, accountant or agent in connection with the Registration Statement, in each case, as is customary for similar due diligence examinations; provided, however, that all records, information and documents that are designated in writing by the Company, in good faith, as confidential, proprietary or containing any nonpublic information shall be kept confidential by the Investor and any such underwriter, attorney, accountant or agent (pursuant to an appropriate confidentiality agreement in the case of any such holder or agent), unless such disclosure is made pursuant to judicial process in a court proceeding (after first giving the Company an opportunity promptly to seek a protective order or otherwise limit the scope of the information sought to be disclosed) or is required by law, or such records, information or documents become available to the public generally or through a third party not in violation of an accompanying obligation of confidentiality; and provided, further, that, if the foregoing inspection and information gathering would otherwise disrupt the Company's conduct of its business, such inspection and information gathering shall, to the maximum extent possible, be coordinated on behalf of the Investor and the other parties entitled thereto by one firm of counsel designated by and on behalf of the majority in interest of the Investor and other parties;

(k) In connection with any offering, make such representations and warranties to the Investor and to the underwriters if an underwritten offering, in form, substance and scope as are customarily made by a company to underwriters in secondary underwritten offerings;

(l) In connection with any underwritten offering, deliver such documents and certificates as may be reasonably required by the underwriters;

(m) Cooperate with the Investor to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Registration Statement, which certificates shall, if required under the terms of this Agreement, be free of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as the Investor may request and maintain a transfer agent for the Common Stock;

(n) Use its commercially reasonable efforts to cause all Registrable Securities covered by the Registration Statement to be listed or qualified for trading on the principal Trading Market, if any, on which the Common Stock is traded or listed on the Effective Date of the Registration Statement; and

(o) Unless and to the extent that such Plan of Distribution requires modification due to inaccuracy due to changes in the plan of distribution of Investor, or due to a change in SEC regulations, to use the Plan of Distribution attached hereto as Exhibit B in each Prospectus and Registration Statement.

Section 3.3. **Obligations and Acknowledgements of the Investor**. In connection with the registration of the Registrable Securities, the Investor shall have the following obligations and hereby make the following acknowledgements:

(a) It shall be a condition precedent to the obligations of the Company to include the Registrable Securities in the Registration Statement that the Investor (i) shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and (ii) shall execute such documents in connection with such registration as the Company may reasonably request. At least five Business Days prior to the first anticipated filing date of a Registration Statement, the Company shall notify the Investor of the information the Company requires from the Investor (the "**Requested Information**") if the Investor elects to have any of its Registrable Securities included in the Registration Statement. If at least two Business Days prior to the anticipated filing date the Company has not received the Requested Information from the Investor, then the Company may file the Registration Statement without including any Registrable Securities of the Investor and the Company shall have no further obligations under this Article 4 to the Investor after such Registration Statement has been declared effective. If the Investor notifies the Company and provides the Company the information required hereby prior to the time the Registration Statement is declared effective, the Company will file an amendment to the Registration Statement that includes the Registrable Securities of the Investor; provided, however, that the Company shall not be required to file such amendment to the Registration Statement at any time less than five Business Days prior to the Effectiveness Date.

(b) The Investor agrees to cooperate with the Company in connection with the preparation and filing of a Registration Statement hereunder, unless the Investor has notified the Company in writing of Investor's election to exclude all of its Registrable Securities from such Registration Statement;

(c) The Investor agrees that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 4.2(e) or 4.2(f), the Investor shall immediately discontinue Investor's disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until the Investor's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 4.2(e) and, if so directed by the Company, the Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Investor's possession (other than one copy of any documents not filed with the SEC for

evidentiary purposes), of the Prospectus covering such Registrable Securities current at the time of receipt of such notice; and

Section 3.4. **Expenses of Registration**. All expenses (other than underwriting discounts and commissions and the fees and expenses of the Investor's counsel) incurred in connection with registrations, filings or qualifications pursuant to this Article 4, including, without limitation, all registration, listing, and qualifications fees, printing and engraving fees, accounting fees, and the fees and disbursements of counsel for the Company, shall be borne by the Company.

Section 3.5. **Accountant's Letter**. If the Investor proposes to engage in an underwritten offering, the Company shall deliver to the Investor, at the Company's expense, a letter dated as of the effective date of each Registration Statement or Post-Effective Amendment thereto, from the independent public accountants retained by the Company, addressed to the underwriters and to the Investor, in form and substance as is customarily given in an underwritten public offering, provided that such seller has made such representations and furnished such undertakings as the independent public accountants may reasonably require;

Section 3.6. **Indemnification and Contribution**

(a) **Indemnification by the Company**. The Company shall indemnify and hold harmless the Investor and each underwriter, if any, which facilitates the disposition of Registrable Securities, and each of their respective officers and directors and each Person who controls such underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such Person being sometimes hereinafter referred to as an "**Indemnified Person**") from and against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, not misleading, or arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Prospectus or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Company hereby agrees to reimburse such Indemnified Person for all reasonable legal and other expenses incurred by them in connection with investigating or defending any such action or claim as and when such expenses are incurred; provided, however, that the Company shall not be liable to any such Indemnified Person in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon (i) an untrue statement or alleged untrue statement made in, or an omission or alleged omission from, such Registration Statement or Prospectus in reliance upon and in conformity with written information furnished to the Company by such Indemnified Person expressly for use therein or (ii) in the case of the occurrence of an event of the type specified in Section 4.2(e), the use by the Indemnified Person of an outdated or defective Prospectus after the Company has provided to such Indemnified Person an updated Prospectus correcting the untrue statement or alleged untrue statement or omission or alleged omission giving rise to such loss, claim, damage or liability.

(b) **Indemnification by Investor**. The Investor agrees, as a consequence of the inclusion of any of Investor Registrable Securities in a Registration Statement to (i) indemnify and hold harmless the Company, its directors (including any person who, with his or her consent, is named in the Registration Statement as a director nominee of the Company), its officers who sign any Registration Statement and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or such other persons may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (A) an untrue statement or alleged untrue statement of a material fact contained in such Registration Statement or Prospectus or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in light of the circumstances under which they were made, in the case of the Prospectus), not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by the Investor expressly for use therein or (B) the use by the Investor of an outdated Prospectus from and after receipt by the Investor of a notice pursuant to Section 4.2(e), and (ii) reimburse the Company for any legal or other expenses incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Investor shall not be liable under this Section 4.6(b) for any amount in excess of the net proceeds paid to the Investor in respect of Registrable Securities sold by it.

(c) **Notice of Claims, etc**. Promptly after receipt by a Person seeking indemnification pursuant to this Section 4.6 (an "**Indemnified Party**") of written notice of any investigation, claim, proceeding or other action in respect of which indemnification is being sought (each, a "**Claim**"), the Indemnified Party promptly shall notify the Person against whom indemnification pursuant to this Section 4.6 is being sought (the "**Indemnifying Party**") of the commencement thereof; but the omission to so notify the Indemnifying Party shall not relieve it from any liability that it otherwise may have to the Indemnified Party, except to the extent that the Indemnifying Party is materially prejudiced and forfeits substantive rights and defenses by reason of such failure. In connection with any Claim as to which both the Indemnifying Party and the Indemnified Party are parties, the Indemnifying Party shall be entitled to assume the defense thereof. Notwithstanding the assumption of the defense of any Claim by the Indemnifying Party, the Indemnified Party shall have the right to employ separate legal counsel and to participate in the defense of such Claim, and the Indemnifying Party shall bear the reasonable fees, out of pocket costs and expenses of such separate legal counsel to the Indemnified Party if (and only if): (i) the Indemnifying Party shall have agreed to pay such fees, costs and expenses, (ii) the Indemnified Party shall reasonably have concluded that representation of the Indemnified Party by the Indemnifying Party by the same legal counsel would not be appropriate due to actual or, as reasonably determined by legal counsel to the Indemnified Party, potentially differing interests between such parties in the conduct of the defense of such Claim, or if there may be legal defenses available to the Indemnified Party that are in addition to or disparate from those available to the Indemnifying Party (other than that the Indemnified Party is entitled to be indemnified by the Indemnifying Party), or (iii) the Indemnifying Party shall have failed to employ legal counsel reasonably satisfactory to the Indemnified Party within a reasonable period of time after notice of the commencement of such

Claim. If the Indemnified Party employs separate legal counsel in circumstances other than as described in the preceding sentence, the fees, costs and expenses of such legal counsel shall be borne exclusively by the Indemnified Party. Except as provided above, the Indemnifying Party shall not, in connection with any Claim in the same jurisdiction, be liable for the fees and expenses of more than one firm of counsel for the Indemnified Party (together with appropriate local counsel). The Indemnified Party shall not, without the prior written consent of the Indemnifying Party (which consent shall not unreasonably be withheld), settle or compromise any Claim or consent to the entry of any judgment that does not include an unconditional release of the Indemnifying Party from all liabilities with respect to such Claim or judgment or contain any admission of wrongdoing.

(d) **Contribution**. If the indemnification provided for in this Section 4.6 is unavailable to or insufficient to hold harmless an Indemnified Party in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the Indemnified Party in connection with the statements or omissions or alleged statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such Indemnifying Party or by such Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.6(d) were determined by pro rata allocation (even if the Investor or any underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 4.6(d). The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) **Limitation on Investor's Obligations**. Notwithstanding any other provision of this Section 4.6, in no event shall the Investor have any liability under this Section 4.6 for any amounts in excess of the dollar amount of the proceeds actually received by the Investor from the sale of Registrable Securities (after deducting any fees, discounts and commissions applicable thereto) pursuant to any Registration Statement under which such Registrable Securities are registered under the Securities Act.

(f) **Other Liabilities**. The obligations of the parties under this Section 4.6 shall be in addition to any liability which such party may otherwise have to any Indemnified Person and the obligations of any Indemnified Person under this Section 4.6 shall be in addition to any liability which such Indemnified Person may otherwise have to any other party. The

remedies provided in this Section 4.6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an indemnified party at law or in equity.

Section 3.7. **Rule 144**. With a view to making available to the Investor the benefits of Rule 144 or any successor thereto, until the shares are eligible for sale without volume limitations, the Company agrees to use its best efforts to:

(i) comply with the provisions of paragraph (c)(1) of Rule 144 or any successor thereto; and

(ii) file with the Commission in a timely manner all reports and other documents required to be filed by the Company pursuant to Section 13 or 15(d) under the Exchange Act; and, if at any time it is not required to file such reports but in the past had been required to or did file such reports, it will, upon the request of the Investor, make available other information as required by, and so long as necessary to permit sales of, its Registrable Securities pursuant to Rule 144 or any successor thereto.

Section 3.8. **Common Stock Issued Upon Stock Split, etc**. The provisions of this Article 4 shall apply to any shares of Common Stock or any other securities issued as a dividend or distribution in respect of the Warrant Shares or the Shares covered by the Asset Purchase Agreement.

ARTICLE 4

OTHER AGREEMENTS OF THE PARTIES

Section 4.1. **Certificates; Legends**.

(a) The Securities may only be transferred in compliance with state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, or (iii) to an Affiliate of the Investor, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act or applicable state securities laws. In the event of a private transfer of the Securities the Transferee shall be required to execute a counterpart to this Agreement, agreeing to be bound by (and shall have the benefits of) the terms hereof other than those set forth in Article 2 hereof, and such Transferee shall be deemed to be an “Investor” for purposes of this Agreement.

(b) The certificate representing the Warrant to be delivered at the Closing and the certificates evidencing the Warrant Shares to be delivered upon exercise of the Warrant will contain appropriate legends referring to restrictions on transfer relating to the registration requirements of the Securities Act and applicable state securities laws.

(c) In connection with any sale or disposition of the Securities by the Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable shares and upon compliance by the Investor with the

requirements of this Agreement, the Company shall or, in the case of Common Stock, shall cause the transfer agent for the Common Stock (the "**Transfer Agent**") to issue replacement certificates representing the Securities sold or disposed of without restrictive legends. Upon the earlier of (i) registration for resale pursuant to the Registration Rights Agreement or (ii) the Warrant Shares becoming freely tradable without restriction pursuant to Rule 144 the Company shall (A) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall reissue a certificate representing shares of Common Stock without legends upon receipt by such Transfer Agent of the legended certificates for such shares, and, in the case of a proposed sale pursuant to Rule 144, a customary representation by the Investor that the conditions required to freely sell the shares of Common Stock represented thereby without restriction pursuant to Rule 144 have been satisfied, and (B) cause its counsel to deliver to the Transfer Agent one or more opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act. From and after the earlier of such dates, upon the Investor's written request, the Company shall promptly cause certificates evidencing the Investor's Securities to be replaced with certificates which do not bear such restrictive legends, and Warrant Shares subsequently issued upon due exercise of the Warrants shall not bear such restrictive legends, provided the provisions of either clause (i) or clause (ii) above, as applicable, are satisfied with respect to such Warrant Shares. When the Company is required to cause an unlegended certificate to replace a previously issued legended certificate, if: (1) the unlegended certificate is not delivered to the Investor within three (3) Business Days of submission by the Investor of a legended certificate and supporting documentation to the Transfer Agent as provided above and (2) prior to the time such unlegended certificate is received by the Investor, the Investor, or any third party on behalf of the Investor or for the Investor's account, purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Investor of shares represented by such certificate (a "**Buy-In**"), then the Company shall pay in cash to the Investor (for costs incurred either directly by such Purchaser or on behalf of a third party) the amount by which the total purchase price paid for Common Stock as a result of the Buy-In (including brokerage commissions, if any) exceeds the proceeds received by the Investor as a result of the sale to which such Buy-In relates. The Investor shall provide the Company written notice indicating the amounts payable to the Investor in respect of the Buy-In.

Section 4.2. **Integration**. The Company has not and shall not, and shall use its best efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the issuance of the Securities to the Investor, or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market in a manner that would require stockholder approval of the sale of the securities to the Investor.

Section 4.3. **Securities Laws Disclosure; Publicity**. By 5:00 p.m. (New York time) on the Trading Day following the execution of this Agreement, and by 5:00 p.m. (New York time) on the Trading Day following the Closing Date, the Company shall issue press releases disclosing the material terms of the transactions contemplated hereby and the Closing, and the Company shall file Current Reports on Form 8-K disclosing the material terms of the Transaction Documents and the Closing. In addition, the Company will make such other filings

and notices in the manner and time required by the Commission and the Trading Market on which the Common Stock is listed.

Section 4.4. **Use of Proceeds**. The Company shall use the net proceeds from the sale of the Securities hereunder (i) for working capital purposes, (ii) for use in the Company's business, or (iii) for investment in new technologies related to the Company's business (including without limitation through the acquisition of other companies).

Section 4.5. **Prospectus Delivery Requirements**. The Investor agrees that the Investor will not effect any sale, transfer or other disposition of any Securities except pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in Section 4.1 is predicated upon the Company's reliance upon this understanding.

Section 4.6. **Reservation of Common Stock**. From and after the Closing Date, the Company shall reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue the Warrant Shares pursuant to any exercise of the Warrants.

Section 4.7. **Disclosure of Information**. Except upon the prior written consent of the Investor, the Company shall not disclose any material non-public information to the Investor or Investor's counsel. Any such disclosure shall be made pursuant to an in accordance with a customary non-disclosure agreement between the Company and the Investor.

Section 4.8. **Agreement not to Exercise Rights; Reduction in Shares.** (a) The Warrant is not exercisable unless and until approved by the Company's shareholders at its annual meeting in 2010 or at a special shareholder meeting in 2010 called for that purpose. If shareholders do not approve the Warrant in 2010 at a special or the annual meeting, the Warrant and this Agreement shall terminate.

(b) The Investor agrees that the Investor will not exercise any rights under this Agreement, including without limitation the right to exercise the Warrant or the right to assign this Agreement or the Warrant, without first having received written notice from the Company that this Agreement and the Warrant have been approved by the Company's Board of Directors or a committee of the Board, and by the Company's shareholders in 2010 at a special or the annual meeting.

(c) If the Company replaces and releases, or simply releases, the Deposit or the Letter of Credit by June 30, 2010, the number of shares covered by the Warrant shall reduce to a number of shares equal to the product of (i) the number of full months elapsed in 2010 times (ii) [___] [total number of shares divided by twelve].

ARTICLE 5

CONDITIONS PRECEDENT TO CLOSING

Section 5.1. **Conditions Precedent to the Obligations of the Investor to Acquire Securities**. The obligation of the Investor to acquire Securities is subject to the satisfaction or waiver by the Investor, at or before the Closing, of each of the following conditions:

(a) **Representations and Warranties**. The representations and warranties of the Company contained herein are true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of such Closing Date;

(b) **Performance**. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing;

(c) **No Injunction**. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents;

(d) **No Adverse Changes**. Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably could have or result in a Material Adverse Effect;

(e) **Company Deliverables**. The Company shall have delivered the Company Deliverables in accordance with Section 2.4.

Section 5.2. **Conditions Precedent to the Obligations of the Company to Issue Securities**. The obligation of the Company to issue Securities is subject to the satisfaction or waiver by the Company, at or before the Closing, of each of the following conditions:

(a) **Representations and Warranties**. The representations and warranties of the Investor contained herein shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of such date;

(b) **Performance**. The Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Investor at or prior to the Closing;

(c) **No Injunction**. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

ARTICLE 6

MISCELLANEOUS

Section 6.1. **Fees and Expenses**. Each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of the Transaction Documents.

Section 6.2. **Entire Agreement**. The Transaction Documents, together with the Exhibits thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents and exhibits.

Section 6.3. **Notices**. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the facsimile number specified in this Section prior to 6:30 p.m. on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Business Day or later than 6:30 p.m. on any Business Day, (c) the Business Day following the date of transmission, if sent by a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses for such notices and communications shall be as follows:

If to the Company:

Energy Focus, Inc.
32000 Aurora Road
Solon, Ohio 44139
Facsimile: 440.519.1038
Attention: Mr. Joseph G. Kaveski, Chief Executive Officer

With a copy to:

Cowden & Humphrey Co. LPA
4600 Euclid Avenue, Suite 400
Cleveland, Ohio 44103-3758
Facsimile: 216.241.2881
Attention: Mr. Gerald W. Cowden

If to the Investor:

[_____
_____
_____, _____ __
Facsimile No.: ___.___.___]

With a copy to:

[_____
_____
_____
Facsimile No.: ___.___.___]

or such other address as may be designated by the Investor or the Company in writing, in the same manner, by such Person.

Section 6.4. **Amendments; Waivers**. No provision of this Agreement may be waived or amended except in a written instrument signed by the Company and the Investor. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

Section 6.5. **Termination**. This Agreement may be terminated prior to the Closing by written agreement of the Investor and the Company. Upon a termination in accordance with this Section 7.5, the Company and the Investor shall have no further obligation or liability (including as arising from such termination) to the other, provided that any liabilities arising prior to such termination shall not be affected by the termination.

Section 6.6. **Construction**. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any of the Transaction Documents.

Section 6.7. **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties and their successors, and permitted assigns. Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party.

Section 6.8. **No Third-Party Beneficiaries**. This Agreement is intended for the benefit of the parties hereto, and their heirs, representatives, successors, and permitted assigns, and their affiliated Persons that are parties to the Asset Purchase Agreement, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

Section 6.9. **Governing Law; Jurisdiction**. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and of the United States, without giving effect to the doctrine of conflicts of laws. The parties each agree that the federal and state courts located within the State of Delaware, the State of Ohio, and the State of Tennessee shall have nonexclusive jurisdiction as to all matters, actions, claims or disputes arising out of this Agreement or the transactions contemplated hereby.

Section 6.10. **Survival**. The representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery of the Securities; provided, however, that the representations and warranties shall expire one month after the Company files its Annual Report on Form 10-K for the period ending December 31, 2010.

Section 6.11. **Execution**. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof, notwithstanding any subsequent failure or refusal of the signatory to deliver an original executed in ink.

Section 6.12. **Severability**. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefore, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

Section 6.13. **Replacement of Securities**. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefore, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities. If a replacement certificate or instrument evidencing any Securities is requested due to a mutilation thereof, the Company may require delivery of such mutilated certificate or instrument as a condition precedent to any issuance of a replacement.

Section 6.14. **Remedies**. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Investor and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that, except as expressly set forth herein with respect to liquidated damages, monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agrees to waive in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first indicated above.

COMPANY:

ENERGY FOCUS, INC.

By: /s/ Joseph G. Kaveski
Name: Joseph G. Kaveski
Its: Chief Executive Officer

INVESTOR:

By: _____
Name: _____
Title: _____

EXHIBIT A

Form of Warrant

EXHIBIT B

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;

- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

- an exchange distribution in accordance with the rules of the applicable exchange;

- privately negotiated transactions;

- short sales effected after the date the registration statement of which this Prospectus is a part is declared effective by the SEC;

- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;

- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share; and

- a combination of any such methods of sale.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares

of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be “underwriters” within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are “underwriters” within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

AGREEMENT OF CONFIDENTIALITY
AND NON-COMPETITION

THIS AGREEMENT OF CONFIDENTIALITY AND NON-COMPETITION (the "Agreement") is made and entered into this _____ day of _____, 20___, by and between **ENERGY FOCUS INC.,** a Delaware corporation which maintains a place of business at 32000 Aurora Road, Solon, Ohio 44139 its successors and assigns (referred to as "Employer" and "Energy Focus") and _____, an individual residing at _____ (hereinafter referred to as "Employee"). In this Agreement, the terms "Energy Focus" and "Employer" shall include any and all subsidiaries of Energy Focus.

A. Employment Relationship. The employment relationship between Employer and Employee shall be "at will," terminable by either party at any time for any reason or no reason. Employee's obligations under this Agreement shall survive the termination of the employment relationship.

B. Definitions.

1. "Company Business" is the development, production and sale of commercial lighting products.

2. "Confidential Information" shall mean information or material (i) that is proprietary to Energy Focus, whether or not designated or labeled as confidential by Energy Focus and (ii) that Employee creates, discovers, develops in whole or in part or of which Employee obtains knowledge of or access to as a result of Employee's relationship with Energy Focus. Confidential Information may include, but is not limited to, designs, works of authorship, mask works, formulae, ideas, concepts, techniques, inventions, devices, improvements, know-how, methods, processes, drawings, specifications, models, data, documentation, diagrams, flow charts, research, developments, procedures, software in various stages of development, source code, object code, marketing techniques and materials, business, marketing, development and product plans, financial information, personnel information, and other confidential business or technical information. For purposes of this Section 2, "Energy Focus" shall mean Energy Focus or any of its affiliates. INFORMATION THAT IS OR BECOMES PUBLICLY KNOWN WITHOUT FAULT ON EMPLOYEE'S PART SHALL NOT BE SUBJECT TO THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN THIS AGREEMENT.

3. "Inventions" shall mean data, ideas, designs, drawings, works of authorship, trademarks, service marks, trade names, service names, logos, mask works, developments, formulae, concepts, techniques, inventions, devices, improvements, know-how, methods, processes, programs and discoveries, whether or not patentable or protectable under applicable copyright or trademark law, or as a mask work, or under other similar law, and whether or not reduced to practice or tangible form, together with any improvements thereon or thereto, derivate works therefrom, know-how related thereto, and intellectual property rights therein.

C. Confidential Information. Employee recognizes and acknowledges that confidential information includes valuable, special and unique assets of Employer. During and after the

Restricted Period described in Paragraph G, Employee shall keep secret and retain in strictest confidence, and shall not use for the benefit of himself or others except in connection with the business and affairs of Employer, any and all Confidential Information to anyone, outside performing duties of his employment with Employer, without the express written consent of Employer or as required by law. Information that is or becomes physically known without fault on the Employer's part shall not be subject to the confidentiality obligations set forth in this agreement.

D. Inventions.

(a) Employee will promptly disclose in writing to Employer all inventions, discoveries, developments, improvements, and innovations (herein called "Inventions") whether patentable or not, conceived or made by Employee, either solely or in concert with others, during the period of his employment with Employer, including, but not limited to, any period prior to the date of this Agreement, whether or not made or conceived during working hours which, (i) relate in any manner to the existing or contemplated business or research activities of Employer, or (ii) are suggested by or result from Employee's work with Employer, or (iii) result from the use of the Employer's time, materials, or facilities, and Employee agrees and understands that all such Inventions shall be the exclusive property of Employer.

(b) Employee hereby assigns to Employer his entire right, title and interest to all such Inventions which are the property of Employer under the provisions of subsection (a) of this Section, and to all unpatented Inventions which Employee now owns, except those specifically described in a statement attached hereto as Exhibit A, and Employee will, at Employer's request and expense, execute specific assignments to any such Invention and execute, acknowledge and deliver such other documents and take such further action as may be considered necessary by Employer at any time during or subsequent to the period of his employment with Employer to obtain and defend any patents copyright registrations, mask work registrations or other protection of Energy Focus, Inventions, in any and all countries and to vest title in such Inventions in Employer or its assigns.

(c) Employee agrees that an Invention disclosed by him to a third person or described in a patent application filed by him or in his behalf within six (6) months following the period of his employment with Employer shall be presumed to have been conceived or made by him during the period of his employment with Employer unless proved to have been conceived and made by him following the termination of employment with Employer.

E. Conflict of Interest. During the period of Employee's employment with Energy Focus, Employee shall not accept employment or consulting work or enter into a contract or accept an obligation incompatible with its obligations under this Agreement.

F. Property of Employer. Employee agrees to deliver promptly to Employer all drawings, blueprints, manuals, letters, notes, notebooks, reports, sketches, formulae, computer programs and files, memoranda, customer lists and all other materials relating in any way to the Company Business and in any way obtained by Employee during the period of his employment with Employer which are in his possession or under his control, and all copies thereof, (i) upon termination of Employee's employment with Employer, or (ii) at any other time at Employer's request. Employee further agrees he will not make or retain any copies of any of the foregoing and will so represent to Employer upon termination of his employment.

G. Non-compete. During the period which includes the entire term of Employee's employment with Employer and one (1) year following the termination of such employment, however caused (the "Restricted Period"), Employee shall not, directly or indirectly, on behalf of Employee or any other person, firm, business, corporation or other entity (each such other person, firm, business, corporation or other entity being referred to hereinafter as a "Person"), with respect to any customer or supplier with whom Employee has had material dealings on behalf of Employer during any part of the term of Employee's employment with Employer, compete with Employer in any manner in any area of the Company Business in which Employee has worked for an Employer in any manner including, without limitation, that Employee shall not (i) engage in the Company Business for his own account; (ii) enter the employ of, or render any services to, any Person engaged in the Company Business; (iii) request or instigate any account or customer or Employer to withdraw, diminish, curtail or cancel any or its business with Employer; or (iv) become interested in any Person engaged in the Company Business as an owner, partner, shareholder, officer, director, licensor, licensee, principal agent, employee, trustee, consultant or in any other relationship or capacity; provided, however, that Employee may own, directly or indirectly, solely as an investment, securities of any corporation which are traded on any national securities exchange if he is not a controlling person of, or a member of a group which controls, such corporation. In the event of Employee's breach of any provision of this section, the running of the Restricted Period shall be automatically tolled (i.e., no part the Restricted Period shall expire) from and after the date of the first such breach.

H. Employees and Consultants of Employer. During the Restricted Period, Employee shall not, directly or indirectly (i) hire, solicit, or encourage to either leave the employment of or cease working with Employer, any person who is then an employee of Employer, or any consultant who is then engaged by Employer, or (ii) hire any employee or consultant who had left the employment of or had ceased consulting with Employer but who had not yet been a former employee or former consultant of Employer for one full year.

I. Rights and Remedies Upon Breach. Both parties recognize that the rights and obligations set forth in this Agreement are special, unique and of extraordinary character. If Employee breaches, or threatens to commit a breach of, any of the provisions of paragraphs C through H of this Agreement (the "Restrictive Covenants"), then Employer shall have the following rights and remedies, each of which shall be independent of the other and severally

enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to Employer under law or equity:

(a) Specific Performance. The right and remedy to have the Restrictive Covenants specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to Employer and that money damages will not provide adequate remedy to Employer. As to the covenants contained in paragraphs G and H, specific performance shall be for a period of time equal to the unexpired portion of the Restricted Period, giving full effect to the tolling provision of paragraphs G and H and beginning on the earlier of the date on which the court's order becomes final and non-appealable and the date on which all appeals have been exhausted.

(b) Accounting. The right and remedy to require Employee to account for and pay over to Employer all compensation, profits, monies, accruals, increments or other benefits (collectively, "Benefits") derived or received by it as the result of any transactions constituting a breach of any of the Restrictive Covenants, and Employee shall account for and pay over such Benefits to Employer.

(c) Blue-Penciling. If any court determines that any one or more of the Restrictive Covenants, or any part thereof, shall be unenforceable because of the scope, duration and/or geographical area covered by such provision, such court shall have the power to reduce the scope, duration or area of such provision and, in its reduced form, such provision shall then be enforceable and shall be enforced.

J. Disclosure. Employer may notify anyone employing Employee or evidencing an intention to employ Employee as to the existence and provisions of this Agreement.

K. **Governing Law and Jurisdiction.** The parties intend that the validity, performance and enforcement of this Agreement shall be governed by the laws of the State of Ohio. In the event of any claim arising out of or related to this Agreement, or the breach thereof, the parties intend to and hereby confer jurisdiction to enforce the terms of this Agreement upon the courts of any jurisdiction within the State of Ohio, and hereby waive any objections to venue in said courts.

L. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, representatives and successors.

M. Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

N. Effect of Captions. The captions in this Agreement are included for convenience only and shall not in any way effect the interpretation or construction of any provision hereof.

O. Construction. In this Agreement, unless the context otherwise requires, words in the singular or in the plural shall each include the singular and the plural, and words of masculine gender shall include the feminine and neuter, and, when sense so indicates, words of the neuter gender may refer to any gender.

P. Notices. All notices, requests, demands or other communications hereunder shall be sent by registered or certified mail to, to each party at the address of such party set forth in the initial introductory paragraph of this Agreement, or to such other address as a party may designate from time to time, pursuant to notice given in accordance herewith.

Q. Counterparts. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. The execution of counterparts shall not be deemed to constitute delivery of this Agreement by any party until all of the parties have executed and delivered their respective counterparts.

R. Acknowledgment. Employee acknowledges that: (i) he has carefully read all of the terms of this Agreement, and that such terms have been fully explained to him; (ii) he understands the consequences of each and every term of this Agreement; (iii) he specifically understands that by signing this Agreement he is giving up certain rights he may have otherwise had, and that he is agreeing to limit his freedom to engage in certain employment during and after the termination of this Agreement, and (iv) the limitations to his right to compete contained in this Agreement represent reasonable limitations as to scope, duration and geographical area, and that such limitations are reasonably related to protection which Employer reasonably requires.

S. Assignment. This Agreement is a personal services contract and it is expressly agreed that the rights and interests of Employee and Employer hereunder may not be sold, transferred, assigned, pledged or hypothecated; provided, however that Employer may assign its rights and obligations hereunder to a related company, affiliate or successor of Employer, whether presently existing or formed after the date hereof.

T. Entire Agreement. This Agreement embodies the entire agreement and understanding between Employer and Employee and supersedes all prior agreements and understandings relating to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands on the date first hereinabove mentioned.

ENERGY FOCUS INC.

By: _____
Its: _____

_____
Employee

EXHIBIT A

INVENTIONS

The following is a list of all "Inventions" (as defined in the Agreement), whether patented or unpatended, in which I have any interest which I do not assign to Employer pursuant to the Agreement; if no "Inventions" are described below, there are no exclusions from the assignment set forth in Section 6(b) of the Agreement:

Execution Copy

NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT (this "Agreement") is made as of March 30, 2010 by and between Energy Focus, Inc., a Delaware corporation (the "Company"), and EF Energy Partners LLC, an Ohio limited liability company (the "Purchaser").

WHEREAS, the Company desires sell to Purchaser, and the Purchaser desires to buy from the Company, a Secured Subordinated Promissory Note Due March 15, 2013 of the Company in the form attached hereto as *Exhibit A* and in the maximum principal amount indicated under the signature of the Purchaser (the "Note"), which Note will be secured and subordinated as provided therein;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. **Purchase and Sale.** (a) The Company agrees to and will issue, sell and deliver to the Purchaser, and the Purchaser subscribes for and agrees to purchase from the Company, the Note. Concurrently with the execution and delivery hereof, the Purchaser will fund the principal amount (the "Purchase Price") indicated under the signature of the Purchaser by wire transfer in immediately available funds to the Company in accordance with its written instructions or as otherwise agreed by the Company.

(b) The Note will be secured by the collateral covered by a Security Agreement between the parties. The issuance, sale, and delivery of the Note will be accompanied by Warrant Acquisition Agreement (the "Warrant Agreement") between the Company and each of the members of the Purchaser (the "Members") and the issuance by the Company to each Member of a Common Stock Purchase Warrant (each a "Warrant").

(c) *Delivery*. The sale and purchase of the Note (the "***Closing***") shall take place concurrently with the execution and delivery of this Agreement by the Purchaser on the date hereof (the "***Closing Date***"). At the Closing, Company will deliver to the Purchaser the Note to be purchased and the Purchaser shall deliver to the Company the Purchase Price. Company may conduct one or more additional closings within 365 calendar days of the initial Closing (each, a "***Subsequent Closing***" and also generally a "***Closing***") to be held at such place and time as Company and the Purchaser may determine (each, a "***Subsequent Closing Date***"). At each Subsequent Closing, Company will deliver to the Purchaser either an amended and restated note or a new and separate note to be purchased by the Purchaser upon receipt of the Purchase Price.

Section 2. **Company's Representations and Warranties.** The Company makes the following representations and warranties:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) All corporate action on the part of the Company and its officers, directors and shareholders necessary for the execution, delivery and performance of this Agreement and the authorization, issuance and delivery of the Note being issued pursuant to this Agreement has been taken as of the date hereof.

(c) The Company is not in violation of any applicable statute, rule or regulation adopted, enacted or promulgated by any government or governmental authority the consequence of which would have an adverse effect on consummation of the transactions contemplated by this Agreement in accordance with its terms or a material adverse effect on the Company's business or financial condition.

(d) Neither execution and delivery of this Agreement, the Note, the Warrant Agreement or the Warrants by the Company nor consummation of the transactions contemplated hereby or thereby will (i) violate or conflict with the articles of incorporation or by-laws of the Company, (ii) violate any provisions of law applicable to the Company, or (iii) violate, conflict with or result in a breach of or default under any contract, instrument or other agreement to which the Company is a party or any governmental or judicial order or decree applicable to the Company.

(e) Each of the representations and warranties made by the Company in the Warrant Agreement is true and correct.

Section 3. **Purchaser's Representations and Warranties**. (a) The Purchaser represents and warrants to the Company that: (i) all documents, records and books relating to the Purchaser's investment in the Company requested by the Purchaser have been made available or delivered to the Purchaser and that all questions of the Purchaser relating to said investment have been answered by the Company; (ii) it understands that the Note is a speculative investment which involves a high degree of risk of loss by the Purchaser of its investment therein; (iii) it has been offered the opportunity to ask questions of appropriate officers of the Company with respect to its business and affairs, and such officers have answered all such questions to its satisfaction; (iv) its purchase of the Note is being made for the Purchaser's own account for investment purposes and with no intention of immediate distribution; (v) the Purchaser has the requisite knowledge and experience in financial and business matters to enable it to evaluate the merits and risks of an investment in the Note; (vi) it is aware that the Note may be a "restricted security" within the meaning of such term under Rule 144 of the Rules of the SEC ("Rule 144"), that the Note may be subject to the resale restrictions of Rule 144 (unless another exemption is available under the Securities Act of 1933, as amended (the "Securities Act"), and that, if the Purchaser at any time is deemed to be an affiliate of the Company, the Note may be subject to

the additional resale restrictions under Rule 144 applicable to affiliates; (vii) it is aware that until the Note may be registered under the Securities Act, it may be unable to liquidate its investment in the Note despite a need to do so; and (viii) it is aware that the Note may bear a legend conditioning the transfer of the Note upon the receipt of a satisfactory opinion to the effect that any proposed transfer of the Note is exempt from registration under the Securities Act, or the like.

(b) The Purchaser represents and warrants to the Company that it is either (i) an accredited investor under Rule 501(a) of Regulation D under the Securities Act of 1933 (the "Act") for the following reasons, or (ii) is not an accredited investor as marked below.

Please check each of the statements below which are applicable to you:

- o The Purchaser is a natural person whose individual net work, or joint net worth with his/her spouse, at the time of his/her purchase exceeds $1,000,000.
- o The Purchaser is a natural person who had individual income in excess of $200,000 in each of 2007 and 2008, or joint income with his/her spouse in excess of $300,000 in each of those years, and who reasonably expects the same or greater income level in 2009.
- o The Purchaser is a pension plan whose investments are directed by a registered investment advisor or an accredited investor, or whose plan assets exceed $5,000,000.
- o The Purchaser is a corporation, partnership, or limited liability company whose assets exceed $5,000,000.
- o The Purchaser is a trust whose assets exceed $5,000,000.
- o The Purchaser is a director or officer of the Company.
- o The Purchaser is an entity in which all of the equity owners are accredited investors.
- o **The Purchaser is not an accredited investor.**

(c) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio.

(d) All action on the part of the Purchaser and members or managers necessary for the execution, delivery and performance of this Agreement and the authorization, issuance and delivery of the other documents being issued pursuant to this Agreement has been taken as of the date hereof.

(e) The Purchaser is not in violation of any applicable statute, rule or regulation adopted, enacted or promulgated by any government or governmental authority the consequence of which would have an adverse effect on consummation of the transactions contemplated by this Agreement in accordance with its terms or a material adverse effect on the Purchaser's business or financial condition.

(f) Neither execution and delivery of this Agreement by the Company nor consummation of the transactions contemplated hereby will (i) violate or conflict with the articles of organization or operator's agreement of the Purchaser, (ii) violate any provisions of law applicable to the Purchaser, or (iii) violate, conflict with or result in a breach of or default under any contract, instrument or other agreement to which the Purchaser is a party or any governmental or judicial order or decree applicable to the Purchaser.

Section 4. **Conditions to Closing of the Purchaser**. Purchaser's obligations at the Closing are subject to the fulfillment, on or prior to the Closing Date, of all of the following conditions, any of which may be waived in whole or in part by all of the Purchasers:

(a) *Representations and Warranties*. The representations and warranties made by Company in **Section 2** hereof and in the other documents shall be true and correct in all material respects.

(b) *Governmental Approvals and Filings*. Except for any notices required or permitted to be filed after the Closing Date with certain federal and state securities commissions and as otherwise disclosed and required under the terms and conditions of the Warrant Agreement, Company shall have obtained all governmental approvals, if any, required in connection with the lawful sale and issuance of the Notes and Warrants.

(c) *Legal Requirements*. At the Closing, the sale and issuance by Company, and the purchase by the Purchaser, of the Note shall be legally permitted by all laws and regulations to which that Purchaser, or Company is subject.

(d) *Proceedings and Documents*. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents and instruments incident to such transactions shall be reasonably satisfactory in substance and form to that Purchaser.

(e) *Transaction Documents*. Company shall have duly executed and delivered to the Purchaser the following documents (the "***Transaction Documents***"):

(i) This Agreement;

(ii)The Note;

(iii) The Warrant Agreement;

(iv) Each Warrant issued under the Warrant Agreement; and

(v) The Security Agreement in the form of **Exhibit D** hereto (the *"**Security Agreement**"*); and

(f) *Perfection of Liens*. All documents or instruments reasonably requested by the Purchasers necessary to create and perfect the liens described in the Security Agreement (the "***Liens***") shall have been delivered to the Purchasers, including but not limited to, taking any other action necessary under the Uniform Commercial Code as enacted under the laws of Delaware to perfect such Liens.

(g) *Consents, Waivers, Etc.* Company shall have obtained all necessary consents, approvals or waivers of any and all third parties, relating to the transaction contemplated hereby.

(h) *Legal Requirements*. At the Closing, the sale and issuance by Company, and the purchase by the Purchaser, of the Notes and the issuance by the Company of the Warrants to the Members shall be legally permitted by all laws and regulations to which such Purchasers or Company are subject.

Section 5. Conditions to Obligations of Company. Company's obligation to issue and sell the Note, at the initial Closing and at each Subsequent Closing are subject to the fulfillment, on or prior to the Closing Date, of the following conditions, any of which may be waived in whole or in part by Company:

(a) *Representations and Warranties*. The representations and warranties made by the Purchaser in **Section 3** hereof shall be true and correct in all material respects.

(b) *Governmental Approvals and Filings*. Except for any notices required or permitted to be filed after the Closing Date with certain federal and state securities commissions, and as required and disclosed under the Warrant Agreement, Company shall have obtained all governmental approvals and made all governmental filings required in connection with the lawful sale and issuance of the Notes and Warrants.

(c) *Legal Requirements*. At the initial Closing and at each Subsequent Closing, the sale and issuance by Company, and the purchase by the Purchaser, of the Notes shall be legally permitted by all laws and regulations to which the Purchaser or Company are subject.

(d) *Purchase Price*. The Purchaser shall have delivered to Company the Purchase Price in respect of the Note being purchased by such Purchaser referenced in **Section 1** hereof.

(e) *Securities Laws*. The transactions contemplated under this Agreement shall have been completed in compliance with all applicable securities and other laws.

Section 6. **Brokers Commissions**. The Purchaser will indemnify and hold harmless the Company from the commission, fee or claim of any person, firm or corporation employed or retained or claiming to be employed or retained by the Purchaser to bring about, or to represent it in, the transaction contemplated hereby. The Company will indemnify and hold harmless the Purchaser from the commission, fee or claim of any person, firm or corporation employed or

retained by the Company to bring about, or to represent it in, the transaction contemplated hereby.

Section 7. **Amendment and Modification.** The parties hereto may not amend, modify or supplement this Agreement except by a writing signed by both of the parties hereto.

Section 8. **Binding Effect, No Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, heirs and legal representatives, and neither party shall be entitled to assign its rights hereunder except upon the other party's prior written consent; provided, however, (a) that Company may assign this Agreement in connection with a merger or consolidation involving Company, or a sale of substantially all of Company's assets, so long as the purchaser or assignee assumes Company's obligations under this Agreement, and (b) that Purchaser may assign this Agreement in connection with a permitted sale or transfer of the Note.

Section 9. **Entire Agreement**. This instrument contains the entire agreement of the parties hereto with respect to the purchase of the Securities and the other transactions contemplated herein, and supersedes all prior understandings and agreements of the parties with respect to the subject matter hereof.

Section 10. **Headings**. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 11. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

Section 12. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware applicable to contracts made and to be performed therein, without regard to the conflicts of law principles thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Note Purchase Agreement to be duly executed as of the day and year first above written.

Energy Focus, Inc.

By: _____
Name: _____
Title: _____

Name of Purchaser:

EF Energy Partners LLC

By: _____
Name: _____
Title: _____

Address: 2171 Mogadore Road
Kent, OH 44240

Principal Amount: $1,150,000.00

EXHIBIT A
to
NOTE PURCHASE AGREEMENT

Form of Secured Subordinated Promissory Note

See Attached

Execution Copy

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE ***"ACT"***), AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS A REGISTRATION STATEMENT UNDER THE ACT WITH RESPECT TO THIS NOTE HAS BECOME EFFECTIVE OR UNLESS LENDER ESTABLISHES TO THE SATISFACTION OF MAKER THAT AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

ENERGY FOCUS, INC.

SECURED SUBORDINATED PROMISSORY NOTE

$1,150,000 March 30**,** 2010 **(*"Issuance Date"*)**

FOR VALUE RECEIVED, **ENERGY FOCUS, INC**., a Delaware corporation (***"Maker" or "Energy Focus"***), hereby promises to pay to the order of EF Energy Partners LLC, (the ***"Lender"***) at the address specified in Section 5(g) hereof, or at such other place as Lender may from time to time direct, at the times hereinafter set forth, in lawful money of the United States, the unpaid principal amount of One Million One Hundred Fifty Thousand Dollars ($1,150,000). Maker also promises to pay Lender interest accruing on such unpaid principal amount at the simple rate of twelve and one-half percent (12.5%) per annum (the ***"Rate"***) in accordance with the terms and provisions of this Secured Subordinated Promissory Note (this ***"Note"***), provided that no interest shall accrue or be payable following any notice pursuant to Section 1(b) of this Note unless an Event of Default (as hereinafter defined) shall have occurred and is continuing.

This Note is made pursuant to the Note Purchase Agreement between Maker and Lender of even date, is secured by the collateral covered by a Security Agreement between Maker and Lender of even date (the "Security Agreement"), and is accompanied by a Warrant Acquisition Agreement between Maker and each member of Lender (the "Members") of even date and the issuance by the Maker to each Member of a Common Stock Purchase Warrant.

SECTION 1. PAYMENTS

(a) Principal and Interest. The entire outstanding principal balance of this Note, together with all accrued interest thereon, will be due and payable on March 15, 2013 (the ***"Maturity Date"***). Interest on the outstanding principal balance will be paid quarterly in arrears beginning on September 15, 2010. If Maker fails to make any payment required pursuant to this Note on or before the date required pursuant to this Note, and such payment is not made within ten (10) days following the date on which such payment is due, in addition to the amount of such payment, Maker shall be required to pay a late payment fee equal to 10% of the amount due on such original payment date.

(b) Prepayments. (i) Except as otherwise indicated in this Note, this Note may be prepaid without premium or penalty at any time after March 15, 2012 following at least forty-five (45) days written notice to Lender and/or the written consent of Lender.

(ii) If Lender shall have given written notice at any time on or prior to January 31, 2012, specifying that Maker is required to prepay this Note pursuant to this Section 1(b)(ii), Maker shall prepay this Note without premium or penalty on March 15, 2012.

(iii) If a "Liquidity Event" occurs before the full repayment of the principal balance of this Note, the Maker will pay the Lender a premium equal to ten percent (10%) of the then outstanding principal balance of this Note upon the closing of the Liquidity Event. As used in this Section 1, the term "Liquidity Event" means (x) the Maker shall have merged into or consolidated with another corporation, or merged another corporation into the Maker, on a basis whereby less than fifty percent (50%) of the total voting power of the surviving corporation is represented by shares held by former shareholders of the Maker prior to that merger or consolidation, or (y) the Maker shall sell substantially all of its assets, with its assets for this purpose excluding its Fiberstars and United States Commercial units.

(c) Application of Payments. All payments made by Maker under this Note shall be applied first to any costs or charges payable under this Note, second to accrued interest on the Note and the remainder shall be applied to principal.

(d) Cancellation of Note. Upon payment in full of the principal balance of this Note and any charges, costs and accrued interest thereon, this Note will be automatically cancelled and Maker's payment obligations hereunder will be extinguished.

SECTION 2. OTHER PAYMENT TERMS

(a) Waivers. Maker hereby waives presentment, demand for payment, notice of non-payment, protests, notice of protests, notice of dishonor and all other notices in connection with this Note. No waiver by Lender shall be deemed to have been made unless such waiver is in writing and signed by Lender. Lender reserves the right to waive or refrain from waiving any right or remedy under this Note. No delay or omission on the part of Lender in exercising any right or remedy under this Note shall operate as a waiver of such right or remedy or of any other right or remedy under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any future occasion.

(b) Default. Upon and after the occurrence of an Event of Default (as hereinafter defined), Lender, in addition to any other remedies available at law or in equity, or under the Security Agreement, shall have the right without presentment, notice or demand of any kind to accelerate this Note and to declare all of the obligations of Maker under this Note immediately due and payable.

(c) Event of Default. For purposes of this Note, an ***"Event of Default"*** occurs if: (a) the Maker does not make the payment of the principal of, and interest on, this Note when the same becomes due and payable, and any applicable late payment fee, as provided in Section 1(a), and such failure continues for the period on and after the notice specified below; (b) the

Maker fails to comply with any of its other obligations under this Note, and such failure continues for the period and after the notice specified below; (c) the Maker, pursuant to or within the meaning of any Bankruptcy Law (as hereinafter defined): (i) commences a voluntary case; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a Custodian (as hereinafter defined) of it or for all or substantially all of its property; (iv) makes a general assignment for the benefit of its creditors; or (v) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (A) is for relief against the Maker in an involuntary case; (B) appoints a Custodian of the Maker or for all or substantially all of its property; or (C) orders the liquidation of the Maker, and the order or decree remains unstayed and in effect for 90 days; (d) the Maker shall default under any Senior Indebtedness, as that term is defined in Section 3; (e) the Maker shall redeem any class of capital stock junior to the Note; (f) the Maker shall sell substantially all of its assets, with its assets for this purpose excluding its Fiberstars and United States Commercial units and its United Kingdom subsidiary, Crescent Lighting, Ltd; (g) a Change in Control of the Maker shall occur; or (h) the full-time active employment of Joseph G. Kaveski, as Chief Executive Officer of the Maker or John M. Davenport by the Maker shall be voluntarily terminated by Maker or by such individual, unless a successor acceptable to Lender shall have been appointed or selected and shall have actually taken office within three months following any such termination, in which case the name of such successor shall be substituted for the name of the individual he or she replaces for the purpose of this section (h).

As used in this Section 2, the term “Bankruptcy Law” means Title 11 of the United States Code or any similar federal or state law for the relief of debtors. The term “Custodian” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

A default under clause (a) in Section 2(c) above is not an Event of Default until the Holder notifies the Maker of such default and the Maker does not cure it within thirty (30) days after the receipt of such notice, which must specify the default, demand that it be remedied and state that it is a “Notice of Default.” A default under clause (b) in Section 2(c) above is not an Event of Default until the Holder notifies the Maker of such default and the Maker does not cure it within sixty (60) days after the receipt of such notice, which must specify the default, demand that it be remedied and state that it is a “Notice of Default.”

As used in this Section 2, a “Change in Control” shall be deemed to have occurred if and when: (i) any person or group of persons acting in concert shall have acquired ownership of or the right to vote or to direct the voting of shares of capital stock of the Maker representing forty percent (40%) or more of the total voting power of the Maker; or (ii) the Maker shall have merged into or consolidated with another corporation, or merged another corporation into the Maker, on a basis whereby less than fifty percent (50%) of the total voting power of the surviving corporation is represented by shares held by former shareholders of the Maker prior to that merger or consolidation.

SECTION 3. SUBORDINATION TO SENIOR INDEBTEDNESS.

Upon (i) an event of default under any Senior Indebtedness, or (ii) any dissolution, winding up, or liquidation of the Maker or of its wholly-owned, British subsidiary, Crescent

Lighting, Ltd. (“Crescent”), whether or not in a bankruptcy, insolvency, or receivership proceeding, the Maker shall not pay, and the Lender shall not be entitled to receive, any of the principal and interest on this Note unless and until the Senior Indebtedness shall have been paid or discharged; provided, however, that notwithstanding the foregoing restrictions, under the terms of the Security Agreement, Lender is entitled to payments of proceeds upon the sale of certain Collateral (as defined in the Security Agreement) and that following the occurrence, and during the continuance of, any Event of Default Lender shall be entitled to take any and all actions permitted under the Security Agreement relating to the Collateral (as defined in the Security Agreement), and, in either such case, Lender shall be entitled to receive such Collateral or the proceeds of any such Collateral in accordance with the Security Agreement at any time and apply such proceeds to the principal and interest on this Note, in accordance with the terms of Section 1(c). For purposes of this Section 3, “Senior Indebtedness” shall mean the principal of and unpaid accrued interest on (x) all indebtedness of the Maker and Crescent to banks, insurance companies, or other financial institutions regularly engaged in the business of lending money, which is money borrowed by the Maker or Crescent, whether or not secured, and (y) any such indebtedness or any debentures, notes, or other evidence of indebtedness issued in exchange for such Senior Indebtedness or any indebtedness arising from the satisfaction of such Senior Indebtedness by a guarantor.

SECTION 4. REPRESENTATIONS OF MAKER

Maker hereby represents and warrants to Lender as of the Issuance Date:

(a) Organization, Qualifications and Power. Maker is a Delaware corporation and its certificate of registration is in full force and effect. Maker has all requisite power and authority to own or lease its properties and assets and to conduct its business as it is presently being conducted and to issue, sell and deliver this Note.

(b) Authorization. The execution and delivery by Maker of this Note and the performance by Maker of its obligations hereunder have been duly authorized by all requisite limited liability company action.

(c) Validity. This Note has been duly executed and delivered by Maker and constitutes the legal, valid and binding obligation of Maker, enforceable against Maker in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of the United States (both state and federal), affecting the enforcement of creditors’ rights or remedies in general as may from time to time be in effect and the exercise by courts of equity powers or their application of public policy.

SECTION 5. MISCELLANEOUS

(a) Amendments. No amendment or waiver of any provision of this Note, nor consent to any departure by Maker herefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Severability. If any term, covenant or provision contained in this Note, or the application thereof to any Person or circumstance, shall be determined to be void, invalid, illegal or unenforceable to any extent or shall otherwise operate to invalidate this Note, in whole or part, then such term, covenant or provision only shall be deemed not contained in this Note; the remainder of this Note shall remain operative and in full force and effect and shall be enforced to the greatest extent permitted by law as if such clause or provision had never been contained herein or therein; and the application of such term, covenant or provision to other Persons or circumstances shall not be affected, impaired or restricted thereby.

(c) Captions. The captions or headings at the beginning of any paragraph or portion of any paragraph in this Note are for the convenience of Maker and Lender and for purpose of reference only and shall not limit or otherwise alter the meaning of the provisions of this Note.

(d) Interest Computation. All interest payable pursuant to this Note will be computed on the basis of a 365-day year for the actual number of days elapsed. In no contingency or event whatsoever shall interest charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that Lender has received interest hereunder in excess of the highest rate applicable hereto, Lender shall promptly refund such excess interest to Maker.

(e) Indemnity. If, after receipt of any payment of, or proceeds applied to the payment of, all or any part of the obligations of Maker under this Note, Lender is for any reason compelled to surrender such payment or proceeds because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the obligations of Maker under this Note or any part thereof intended to be satisfied shall be revived and continue, and this Note and the Security Agreement shall continue in full force as if such payment or proceeds had not been received by the Lender, and Maker shall be liable to pay to the Lender, and indemnify and hold the Lender harmless for, the amount of such payment or proceeds surrendered. The provisions of this paragraph shall be and remain effective notwithstanding any contrary action which may have been taken by the Lender in reliance upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to the Lender's rights under this Note or the Security Agreement and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. Without prejudice to any other provisions of this Note or the Security Agreement, Maker hereby agrees to indemnify the Lender against any loss or expense that the Lender may sustain or incur as a consequence of any default by Maker in payment when due of any amount due hereunder.

(f) Usury Savings Clause. It is the intention of the parties hereto to comply with applicable state and federal usury laws from time to time in effect. Accordingly, notwithstanding any provision to the contrary in this Note or any other document related hereto, in no event (including, but not limited to, prepayment or acceleration of the maturity of any obligation) will this Note or any such other document require the payment or permit the

collection or receipt of interest in excess of the highest lawful rate. If under any circumstance whatsoever, any provision of this Note or of any other document pertaining hereto will provide for the payment, collection or receipt of interest in excess of the highest lawful rate, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstances Lender will ever receive anything of value as interest or deemed interest by applicable law under this Note or any other document pertaining hereto or otherwise an amount that would exceed the highest lawful rate, such amount that would exceed the highest lawful rate shall be applied to the reduction of the principal amount owing under this Note or on account of any other indebtedness of Maker to Lender, and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of this Note and such other indebtedness, such excess shall be refunded to Maker. In determining whether or not the interest paid or payable with respect to any indebtedness of Maker to Lender, under any specified contingency, exceeds the highest lawful rate, Maker and Lender will, to the maximum extent permitted by applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, (iii) amortize, prorate, allocate and spread the total amount of interest throughout the full term of such indebtedness (including any extension or renewal) so that interest thereon does not exceed the maximum amount permitted by applicable law, and/or (iv) allocate interest between portions of such indebtedness, to the end that no such portion shall bear interest at a rate greater than that permitted by applicable law. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event that the maturity of this Note is accelerated. If at any time the Rate exceeds the highest lawful rate, then the rate at which interest shall accrue hereunder shall automatically be limited to the highest lawful rate, and shall remain at the highest lawful rate until the total amount of interest accrued hereunder equals the total amount of interest that would have accrued but for the operation of this sentence. Thereafter, interest shall accrue at the Rate unless and until the Rate again exceeds the highest lawful rate, in which case the immediately preceding sentence shall apply.

(g) Governing Law and Venue. This Note shall in all respects be governed by, and construed and interpreted in accordance with, the internal substantive laws of the State of Ohio without giving effect to the principles of conflicts of law thereof. Maker and Lender hereby irrevocably submit to the exclusive jurisdiction of the state court sitting the City of Cleveland, for the adjudication of any dispute hereunder and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper.

(h) Notices. Any notice, request or other communication required or permitted hereunder will be in writing and be deemed to have been duly given (a) when personally delivered or sent by facsimile transmission (the receipt of which is confirmed in writing), (b) one business day after being sent by a nationally recognized overnight courier service or (c) five business days after being sent by registered or certified mail, return receipt requested, postage prepaid, to the parties at their respective addresses set forth below.

If to Maker: Energy Focus, Inc.
32000 Aurora Road
Solon, Ohio 44321
Attention: Mr. Joseph G. Kaveski
Chief Executive Officer
Facsimile: 440.848.8561

If to Lender: EF Energy Partners LLC
2171 Mogadore Road
Kent, Ohio 44240
Attention: Joseph K. Zeno
Facsimile: 330.678.0859

(i) Waiver of Jury Trial. MAKER IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE OTHER RELATED DOCUMENTS OR THE ACTIONS OF LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

ENERGY FOCUS, INC.

By: _____
Name: Joseph G. Kaveski
Title: Chief Executive Officer

Execution Copy

WARRANT ACQUISITION AGREEMENT

This Warrant Acquisition Agreement (this "**Agreement**") is entered into as of March 30, 2010, by and between Energy Focus, Inc., a Delaware corporation (the "**Company**"), and the persons and entities listed on the schedule of investors attached hereto as Schedule I (each an investor and collectively "**Investors**").

RECITALS

WHEREAS, each of the Investors is a member of EF Energy Partners LLC, an Ohio limited liability company (the "Lender"); and

WHEREAS, the Company and the Lender have entered into a Note Purchase Agreement dated March 30, 2010 (the "Purchase Agreement") pursuant to which Lender will purchase the Company's Secured Subordinated Promissory Note of even date herewith (the "Note"); and

WHEREAS, Investor has been induced to invest in the Lender, providing Lender with the amounts necessary to perform its obligations under the Purchase Agreement, by the agreement of the Company to enter into this Agreement with the Investors; and

WHEREAS, this Agreement is being entered into pursuant to the Purchase Agreement; and

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(2) of the Securities Act (as defined below) and Rule 506 promulgated thereunder, the Company desires to issue to the Investors and each Investor desires to acquire from the Company, certain warrants and securities of the Company, as more fully described in this Agreement,

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Investors agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1. **Definitions**. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings indicated in this Section 1.1:

"Action" means any action, suit, inquiry, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation pending or threatened in writing against or affecting the Company, any Subsidiary or any of their respective properties before or by any

court, arbitrator, governmental or administrative agency, regulatory authority (federal, state, county, local or foreign), stock market, stock exchange or trading facility.

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144.

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

"Business Day" means any day except Saturday, Sunday and any day which is a federal legal holiday or a day on which banking institutions in the City of New York are authorized or required by law or other governmental action to close.

"Claim" has the meaning set forth in Section 3.6(c).

"Closing" means the closing of the acquisition and issuance of a Warrant pursuant to Article 2.

"Closing Date" means the Business Day immediately following the date on which all of the conditions set forth in Sections 5.1 and 5.2 hereof are satisfied, or such other date as the parties may agree.

"Commission" means the Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.001 per share, and any securities into which such common stock may hereafter be reclassified.

"Common Stock Equivalents" means any securities of the Company or any Subsidiary which entitle the holder thereof to acquire Common Stock at any time, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock or other securities that entitle the holder to receive, directly or indirectly, Common Stock.

"Company Counsel" means Cowden & Humphrey Co. LPA.

"Company Deliverables" has the meaning set forth in Section 2.4.

"Effective Date" means the date that any Registration Statement filed pursuant to Article 3 is first declared effective by the Commission.

"Effectiveness Period" has the meaning set forth in Section 3.1(b).

"Environmental Law" has the meaning set forth in Section 2.5(x).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business, whether or not incorporated, that together with the Company would be deemed to be a single employer for purposes of Section 4001 of ERISA or Sections 414(b), (c), (m), (n) or (o) of the Internal Revenue Code of 1986, as amended.

"Evaluation Date" has the meaning set forth in Section 2.5(r).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exempt Issuance" means the issuance by the Company (a) to employees, officers, directors of, and consultants to, the Company of shares of Common Stock or options for the purchase of shares of Common Stock pursuant to stock option or long-term incentive plans approved by the Board, (b) of shares of Common Stock upon the exercise of Warrants issued hereunder, (c) of shares of Common Stock upon conversion of shares of Series A Preferred Stock, (d) of shares of Common Stock upon exercise of Prior Warrants or conversion of Prior Convertible Securities, (e) of securities issued pursuant to acquisitions, licensing agreements, or other strategic transactions, (f) of securities issued in connection with equipment leases, real property leases, loans, credit lines, guaranties or similar transactions approved by the Board, (g) of securities issued in connection with join ventures or similar strategic relationships approved by the Board, (h) of securities in a merger, or (i) of securities in a public offering registered under the Securities Act; provided that in the case of securities issued pursuant clauses (e), (f), (g) and (h), the purpose of such issuance may not be primarily to obtain cash financing.

"Filing Date" means the date that is six months after the Closing Date.

"Financial Statements" has the meaning set forth in Section 2.5 (h).

"GAAP" means generally accepted accounting principles as in effect as of the date hereof in the United States of America.

"Governmental Authority" has the meaning set forth in Section 2.5 (e).

"Hazardous Substance" has the meaning set forth in Section 2.5 (x).

"Indemnified Party" has the meaning set forth in Section 2.5 (c).

"Indemnified Person" has the meaning set forth in Section 2.5 (a).

"Indemnifying Party" has the meaning set forth in Section 2.5 (c).

"Intellectual Property Rights" has the meaning set forth in Section 2.5 (o).

"Lender" has the meaning set forth in the first recital.

"Lien" means any lien, charge, encumbrance, security interest, right of first refusal or other restrictions of any kind.

"Material Adverse Effect" means any of (i) a material and adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material and adverse effect on the results of operations, assets, prospects, business or condition (financial or otherwise) of the Company and the Subsidiary, taken as a whole, or (iii) a material impairment of the Company's ability to perform on a timely basis its obligations under any Transaction Document.

"Note" has the meaning set forth in the second recital.

"OFAC" has the meaning set forth in Section 2.5 (aa).

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Post-Effective Amendment" means a post-effective amendment to the Registration Statement.

"Post-Effective Amendment Filing Deadline" means the seventh Business Day after the Registration Statement ceases to be effective pursuant to applicable securities laws due to the passage of time or the occurrence of an event requiring the Company to file a Post-Effective Amendment.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Prospectus" has the meaning set forth in Section 3.3.

"Purchase Agreement" has the meaning set forth in the second recital.

"Registrable Securities" means the Warrant Shares issuable to the Investors; provided, however, that no Investor shall be required to exercise such Investor's Warrant in order to have the Shares covered by it included in any Registration Statement.

"Registration Period" means the period commencing on the date hereof and ending on the date on which all of the Registrable Securities may be sold to the public without registration and without volume or manner restrictions under the Securities Act in reliance on Rule 144.

"Registration Statement" means a registration statement filed on the appropriate Form with, and declared effective by, the Commission under the Securities Act and covering the resale by the Investors of the Registrable Securities.

"Requested Information" has the meaning set forth in Section 3.3(a).

"Required Effectiveness Date" means the earlier of (i) the date that is eight months after the Closing Date without SEC review or eleven months in the event of an SEC review process, or, in the case of the registration of Cut Back Shares (as defined in Section 3.1(a)), eleven

months after the Restriction Termination Date or (ii) five Business Days after receipt by the Company from the Commission of notice of "no review" of the Registration Statement.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"SEC Reports" has the meaning set forth in Section 2.5 (h).

"Securities" means the Warrant and the Warrant Shares.

"Securities Act" means the Securities Act of 1933, as amended.

"Shares" means the shares of Common Stock issuable to the Investors.

"Subsidiary" means any "significant subsidiary" as defined in Rule 1-02(w) of Regulation S X promulgated by the Commission under the Exchange Act.

"Trading Day" means (i) a day on which the Common Stock is traded on a Trading Market, or (ii) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Stock is not then listed or quoted on the OTC Bulletin Board, a day on which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

"Trading Market" means whichever of the New York Stock Exchange, the American Stock Exchange, the Nasdaq National Market, or the Nasdaq Over-the-Counter Market on which the Common Stock is listed or traded on the date in question.

"Transaction Documents" means this Agreement, the Warrant, the Purchase Agreement, the Note and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Warrant" means each Common Stock Purchase Warrant, in the form of Exhibit A, which is issuable to the Investors at the Closing.

"Warrant Shares" means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE 2

ISSUE AND SALE

Section 2.1. **Issuance of Securities at the Closing**. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with applicable law, the Company agrees to issue to the respective Investors, and each Investor respectively agrees to accept from

the Company, a Warrant in the form of Exhibit A to purchase the number of shares of Common Stock set forth opposite such Investor's name on Schedule I.

Section 2.2. **Consideration**. As consideration for the issuance of the Warrant being acquired at the Closing, each Investor severally shall on the Closing Date take all actions required of it.

Section 2.3. **Delivery of Warrant**. At the Closing, the Company shall take all actions required of it to (i) issue to the Investors the Warrants and (ii) execute and deliver to the transfer agent for the Common Stock irrevocable instructions to issue to the Investors the Warrant Shares.

Section 2.4. **Additional Closing Deliveries**. At the Closing, the Company shall deliver or cause to be delivered to the Investors the following (the "**Company Deliverables**"):

(i) Irrevocable instructions to the Company's transfer agent as to the reservation and issuance of the Warrant Shares; and

(ii) A good standing certificate of the Company issued by the Secretary of State of the State of Delaware dated as of a recent date.

REPRESENTATIONS AND WARRANTIES

Section 2.5. **Representations and Warranties of the Company**. The Company hereby makes the following representations and warranties to the Investors:

(a) **Subsidiaries**. The Company has no direct or indirect Subsidiaries other than as disclosed to the Investors.

(b) **Organization and Qualification**. Each of the Company and each Subsidiary is duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and each Subsidiary is duly qualified to conduct its respective business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, and no proceedings have been instituted in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, such power and authority or qualification.

(c) **Authorization; Enforcement**. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its obligations thereunder. The execution and delivery of each of the Transaction Documents by the Company and the consummation by it of the transactions contemplated thereby have been duly authorized by all necessary action on

the part of the Company and no further corporate action is required by the Company in connection therewith. Each Transaction Document has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(d) **No Conflicts**. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a breach or default (or an event that with notice or lapse of time or both would become a breach or default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, or result in the imposition of any Lien upon any of the material properties or assets of the Company or of any Subsidiary pursuant to, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(e) **Filings, Consents and Approvals**. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority (a "**Governmental Authority**") or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents and the consummation of the transactions contemplated thereby, other than (i) the filing of a Notice of Sale of Securities on Form D with the Commission under Regulation D of the Securities Act, (ii) filings required under applicable state securities laws, (iii) the filing with the Commission of one or more Registration Statements in accordance with the requirements of Article 3 of this Agreement, and (iv) the submission to the NASDAQ Stock Market LLC of a Notification: Listing of Additional Shares.

(f) **Issuance of the Securities**. The Company has reserved and set aside from its duly authorized capital stock a sufficient number of shares of Common Stock to satisfy in full the Company's obligations to issue the Warrant Shares upon exercise of the Warrants. The Warrant Shares are duly authorized and, when issued and paid for upon exercise of the Warrants in accordance with their terms, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens, other than Liens created by the Investors and those imposed by applicable securities laws.

(g) **Capitalization**. The authorized capital stock of the Company consists of 30,000,000 shares of Common Stock and no shares of Preferred Stock, par value $.0001, of which no shares have been designed Series A Preferred Stock and no shares are undesignated. As of the close of business on January 31, 2010, 21,250,304 shares of Common Stock were issued and outstanding, all of which are validly issued, fully-paid and non-assessable. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except pursuant to outstanding options granted to directors, employees, and consultants of the Company, to outstanding warrants to purchase Common Stock, and to the reservation of shares for sale under the Company's Stock Purchase Plan, the Convertible Promissory Note dated December 31, 2009 relating to the acquisition of Stones River Companies, LLC, and, options issued to various officers in connection with the Company's Executive Compensation Reduction Plan and warrants to certain directors and officers in connection with the Company's deposit to secure construction surety bonds for its Stones River Companies subsidiary, or as a result of transactions in Securities as contemplated by this Agreement, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issue and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Investors) and will not result in a right of any holder of Company securities to adjust the exercise or conversion price under such securities. No further approval or authorization of any stockholder, the Board of Directors of the Company or any other Person is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) **SEC Reports; Financial Statements**. The Company has filed all reports required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the twelve months preceding the date hereof (the foregoing materials, being collectively referred to herein as the "**SEC Reports**"). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the Commission promulgated thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company (the "**Financial Statements**") included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such Financial Statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved, except as may be otherwise specified in such Financial Statements or the notes thereto, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal year-end audit adjustments.

(i) **Material Changes**. Except as set forth in the Financial Statements, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities or obligations (contingent or otherwise) other than (A) trade payables, accrued expenses and other liabilities incurred in the ordinary course of business consistent with past practice incurred since the date of the most recent Financial Statements and (B) liabilities incurred in the ordinary course of business not required to be reflected in the Financial Statements pursuant to GAAP or required to be disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting or the identity of its auditors, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans, the Company Stock Options and, options issued to various officers in connection with the Company's Executive Compensation Reduction Plan and warrants to certain directors and officers in connection with the Company's deposit to secure construction surety bonds for its Stones River Companies subsidiary. The Company does not have pending before the Commission any request for confidential treatment of information. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP.

(j) **Litigation and Investigations**. Except as otherwise disclosed to the Investors there is no Action which (i) challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) except as specifically disclosed in the SEC Reports, could, if there were an unfavorable decision, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof (in his capacity as such), is the subject of any pending Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty, except as specifically disclosed in the SEC Reports. To the knowledge of the Company, there is not pending any investigation by the Commission involving the Company or any current or former director or officer of the Company (in his or her capacity as such). The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act. There are no outstanding comments by the staff of the Commission on any filing by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) **Labor Relations**. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company.

(l) **Compliance**. Neither the Company nor any Subsidiary (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body, or (iii) is or has been in violation of any statute, rule or regulation of any

governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(m) **Regulatory Permits**. The Company and the Subsidiary possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such permits.

(n) **Title to Assets**. The Company and the Subsidiary have good and marketable title in fee simple to all real property owned by them that is material to their respective businesses and good and marketable title in all personal property owned by them that is material to their respective businesses, in each case free and clear of all Liens, except for Liens that do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiary. All real property and facilities held under lease by the Company and the Subsidiary are held by them under leases of which the Company and the Subsidiary are in material compliance, except as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(o) **Patents and Trademarks**. The Company and the Subsidiary have, or have valid rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, licenses and other similar rights that are necessary or material for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect (collectively, the "**Intellectual Property Rights**"). No claims or Actions have been made or filed by any Person against the Company to the effect that Intellectual Property Rights used by the Company or any Subsidiary violate or infringe upon the rights of such claimant. To the knowledge of the Company, after commercially reasonable investigation, all of the Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights or by the Company of the Intellectual Property Rights of any other Person.

(p) **Insurance**. The Company and the Subsidiary are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are prudent and customary in the businesses in which the Company and the Subsidiary are engaged. The Company has no reason to believe that it will not be able to renew its and the Subsidiary's existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business on terms consistent with the market for the Company's and such Subsidiaries' respective lines of business.

(q) **Transactions With Affiliates and Employees**. Except as set forth in the SEC Reports, none of the officers or directors of the Company and, to the knowledge of the Company, none of the employees of the Company is a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

(r) **Sarbanes-Oxley; Internal Accounting Controls**. The Company is in material compliance with all provisions of the Sarbanes-Oxley Act of 2002 (including the rules and regulations of the Commission adopted thereunder) which are applicable to it as of the Closing Date. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the filing date of the most recently filed periodic report under the Exchange Act (such date, the "**Evaluation Date**"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Exchange Act), or to the Company's knowledge, in other factors that could significantly affect the Company's internal controls.

(s) **Certain Fees**. No brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement. The Investors shall have no obligation with respect to any fees or with respect to any claims (other than such fees or commissions owed by the Investors pursuant to written agreements executed by the Investors which fees or commissions shall be the sole responsibility of the Investors) made by or on behalf of any Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by this Agreement.

(t) **Certain Registration Matters**. Assuming the accuracy of the Investors' representations and warranties set forth in Section 2.6(b)-(e), no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Investors under the Transaction Documents and the Asset Purchase Agreement.

(u) **Investment Company**. The Company is not, and is not an Affiliate of, and immediately following the Closing will not have become, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(v) **No Additional Agreements**. The Company does not have any agreement or understanding with the Investors with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(w) **Full Disclosure**. The SEC Reports and the Company's representations and warranties set forth in this Agreement, taken together, are true and correct in all material

respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Investors or Investors' agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Investors will rely on the foregoing representation in effecting transactions in securities of the Company. The Company acknowledges and agrees that the Investors do not make or have not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.6 hereof.

(x) **Environmental Matters**. To the Company's knowledge: (i) the Company and its Subsidiary have complied with all applicable Environmental Laws, except for such noncompliance as could not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect; (ii) after commercially reasonable investigation, the properties currently owned or operated by Company (including soils, groundwater, surface water, buildings or other structures) are not contaminated with any Hazardous Substances; (iii) after commercially reasonable investigation, the properties formerly owned or operated by Company or its Subsidiary were not contaminated with Hazardous Substances during the period of ownership or operation by Company and its Subsidiary; (iv) Company and its Subsidiary are not subject to any material liability for any Hazardous Substance disposal or contamination on any third party property; (v) Company and its Subsidiary have not received any written notice, demand, letter, claim or request for information alleging that Company and its Subsidiary may be in violation of or liable under any Environmental Law; and (vi) Company and its Subsidiary are not subject to any orders, decrees, injunctions or other arrangements with any Governmental Authority or subject to any indemnity or other agreement with any third party relating to liability under any Environmental Law or relating to Hazardous Substances which could, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

As used in this Agreement, the term "**Environmental Law**" means any federal, state, local or foreign law, regulation, order, decree, permit, authorization, opinion, common law or agency requirement relating to: (A) the protection, investigation or restoration of the environment, health and safety, or natural resources; (B) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance or (C) noise, odor, wetlands, pollution, contamination or any injury or threat of injury to persons or property.

As used in this Agreement, the term "**Hazardous Substance**" means any substance that is: (i) listed, classified or regulated pursuant to any Environmental Law; (ii) any petroleum product or by-product, asbestos-containing material, polychlorinated biphenyls, radioactive materials or radon; or (iii) any other substance which is the subject of regulatory action by any Governmental Authority pursuant to any Environmental Law.

(y) **Taxes**. The Company and its Subsidiary have filed all necessary federal, state and foreign income and franchise tax returns when due (or obtained appropriate extensions for filing) and have paid or accrued all taxes shown as due thereon, and the Company has no

knowledge of a tax deficiency which has been or might be asserted or threatened against it or any Subsidiary which would have a Material Adverse Effect.

(z) **ERISA**. Neither the Company nor any ERISA Affiliate maintains, contributes to or has any liability or contingent liability with respect to any employee benefit plan subject to ERISA.

(aa) **Foreign Assets Control Regulations and Anti-Money Laundering**.

(i) **OFAC**. Neither the issuance of the Warrants and Warrant Shares to the Investors, nor the use of the respective proceeds thereof, shall cause the Investors to violate the U.S. Bank Secrecy Act, as amended, and any applicable regulations thereunder or any of the sanctions programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**") of the United States Department of Treasury, any regulations promulgated thereunder by OFAC or under any affiliated or successor governmental or quasi-governmental office, bureau or agency and any enabling legislation or executive order relating thereto. Without limiting the foregoing, neither the Company nor the Subsidiary (i) is a person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 200l Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order.

(ii) **Patriot Act**. The Company and the Subsidiary are in compliance, in all material respects, with the USA PATRIOT Act. No part of the proceeds of the sale of the Warrant Shares hereunder will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(bb) **Acknowledgment Regarding Investors' Trading Activity**. Except as expressly set forth herein, it is understood and acknowledged by the Company that, except to the extent required by applicable law: (i) no Investor has been asked by the Company to agree, nor has any Investor agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) that past or future open market or other transactions by the Investors, specifically including, without limitation, short sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities; (iii) that any Investor, and counter-parties in "derivative" transactions to which such Investor is a party, directly or indirectly, presently may have a "short" position in the Common Stock; and (iv) that no Investor shall be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that, to the extent permitted by applicable law (y) any Investor may engage in hedging activities at various times

during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Warrant Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents, except to the extent that any such activities violate the provisions of applicable law.

(cc) **Regulation M Compliance**. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

(dd) **Form S-3 Eligibility**. The Company is eligible to register the resale of the Warrant Shares for resale by the Investors on Form S-3 promulgated under the Securities Act; provided, however, that no violation of this Section 2.6(dd) shall be deemed to have occurred in the event that the SEC imposes any restriction on the registration of the Warrant Shares pursuant to Rule 415 as contemplated in Section 3.1(a) below.

Section 2.6. **Representations and Warranties of the Investors**. Each Investor, severally and with respect solely to himself, hereby represents and warrants to the Company as follows:

(a) **Authority**. This Agreement has been duly executed by such Investor, and when delivered by such Investor in accordance with terms hereof, will constitute the valid and legally binding obligation of such Investor, enforceable against such Investor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(b) **Own Account**. Such Investor is acquiring the Securities as principal for such Investor's own account and not with a view to or for distributing or reselling such Securities or any part thereof, without prejudice, however, to such Investor's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws. Such Investor does not have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities.

(c) **Investor Status**. Such Investor is an "accredited investor" as defined in Rule 501(a) under the Securities Act. Such Investor is not a registered broker-dealer under Section 15 of the Exchange Act or associated or affiliated with such a broker-dealer. Such Investor has a principal address as listed for such Investor on Schedule I.

(d) **Access to Information**. Such Investor acknowledges that she has reviewed the SEC Reports and has been afforded: (i) the opportunity to ask such questions as she

has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and the Subsidiary and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable such Investor to evaluate such Investor's investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(e) **General Solicitation**. Such Investor is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) **Disclosure**. Such Investor acknowledges and agrees that the Company neither makes nor has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.5.

(g) **Regulation M Compliance**. Such Investor has not, and to such Investor's knowledge no one acting on such Investor's behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

ARTICLE 3

REGISTRATION RIGHTS

Section 3.1. **Shelf Registration**.

(a) As promptly as possible, and in any event on or prior to the Filing Date, the Company shall prepare and file with the Commission a "shelf" Registration Statement covering the resale of all Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. If for any reason (including, without limitation, the Commission's interpretation of Rule 415) the Commission does not permit all of the Registrable Securities to be included in such Registration Statement, then the Company shall prepare and file with the Commission one or more separate Registration Statements with respect to any such Registrable Securities not included with the initial Registration Statements, as soon as allowed under SEC Regulations and is commercially practicable. The Registration Statement shall be on a Form S-3; in the event Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form in accordance herewith and (ii) attempt to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statements then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the

Commission. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act or requires any Investor to be named as an "underwriter", the Company shall use its commercially reasonable best efforts to persuade the SEC that the offering contemplated by the Registration Statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that no Investor is an "underwriter". The Investors shall have the right to participate or have their counsel participate in any meetings or discussions with the SEC regarding the SEC's position and to comment or have Investors' counsel comment on any written submission made to the SEC with respect thereto, and to have such comments relayed to the SEC with the consent of the Company, not to be unreasonably withheld. No such written submission shall be made to the SEC to which the Investors' counsel reasonably objects. In the event that, despite the Company's commercially reasonable efforts and compliance with the terms of this Section 2(e), the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the "**Cut Back Shares**") and/or (ii) with the consent of the Investors' counsel, not to be unreasonably withheld, agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company's compliance with the requirements of Rule 415; provided, however, that the Company shall not agree to name any Investor as an "underwriter" in such Registration Statement without the prior written consent of such Investor (collectively, the "**SEC Restrictions**"). No liquidated damages shall accrue on or as to any Cut Back Shares until such time as the Company is able, using commercially reasonable efforts, to effect the filing of an additional Registration Statement with respect to the Cut Back Shares in accordance with any SEC Restrictions (such date, the "**Restriction Termination Date**"). From and after the Restriction Termination Date, all of the provisions of this Article 3 (including the liquidated damages provisions) shall again be applicable to the Cut Back Shares; provided, however, that for such purposes, references to the Filing Date shall be deemed to be the Restriction Termination Date.

(b) The Company shall use its best efforts to cause each Registration Statement filed hereunder to be declared effective by the Commission as promptly as possible after the filing thereof, but in any event prior to the Required Effectiveness Date, and shall use its best efforts to keep the Registration Statement continuously effective under the Securities Act until the earlier of (i) the fifth anniversary of the Effective Date, (ii) the date when all Registrable Securities covered by such Registration Statement have been sold publicly, or (iii) the date on which the Registrable Securities are eligible for sale without volume limitation within a three-month period pursuant to Rule 144 or any successor thereto (the "**Effectiveness Period**"). The Company shall notify the Investors in writing promptly (and in any event within one Business Day) after receiving notification from the Commission that the Registration Statement has been declared effective.

(c) As promptly as possible, and in any event no later than the Post-Effective Amendment Filing Deadline, the Company shall prepare and file with the Commission a Post-Effective Amendment. The Company shall use its best efforts to cause the Post-Effective Amendment to be declared effective by the Commission as promptly as possible after the filing thereof. The Company shall notify the Investors in writing promptly (and in any event within

one Business Day) after receiving notification from the Commission that the Post-Effective Amendment has been declared effective.

(d) If the Company issues to the Investors any Common Stock pursuant to the Transaction Documents that is not included in the initial Registration Statement, then the Company shall file an additional Registration Statement covering such number of shares of Common Stock on or prior to the Filing Date and shall use it best efforts, but in no event later than the Required Effectiveness Date, to cause such additional Registration Statement to be declared effective by the Commission.

(e) The Registration Statement shall not include any securities other than the Registrable Securities without the prior written consent of the Investors.

Section 3.2. **Registration Process**. In connection with the registration of the Registrable Securities pursuant to Section 3.1, the Company shall:

(a) Prepare and file with the Commission the Registration Statement and such amendments (including post effective amendments) to the Registration Statement and supplements to the prospectus included therein (a "**Prospectus**") as the Company may deem necessary or appropriate and take all lawful action such that the Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading and that the Prospectus forming part of the Registration Statement, and any amendment or supplement thereto, does not at any time during the Registration Period include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.;

(b) Comply with the provisions of the Securities Act with respect to the Registrable Securities covered by the Registration Statement until the end of the Effectiveness Period;

(c) Prior to the filing with the Commission of the Registration Statement (including any amendments thereto) and the distribution or delivery of any Prospectus (including any supplements thereto), provide draft copies thereof to the Investors and reflect in such documents all such comments as the Investors (and Investors' counsel) reasonably may propose and furnish to the Investors and Investors' legal counsel identified to the Company (i) promptly after the same is prepared and publicly distributed, filed with the Commission, or received by the Company, one copy of the Registration Statement, each Prospectus, and each amendment or supplement thereto, and (ii) such number of copies of the Prospectus and all amendments and supplements thereto and such other documents, as any Investor may reasonably request in order to facilitate the disposition of the Registrable Securities;

(d) (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions as any Investor reasonably requests, (ii) prepare and file in such jurisdictions such amendments (including post effective amendments) and supplements to such registrations and qualifications

as may be necessary to maintain the effectiveness thereof at all times during the Registration Period, (iii) take all such other lawful actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all such other lawful actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (A) qualify to do business in any jurisdiction where it would not otherwise be required to qualify, (B) subject itself to general taxation in any such jurisdiction or (C) file a general consent to service of process in any such jurisdiction;

(e) As promptly as practicable after becoming aware of such event, notify the Investors of the occurrence of any event, as a result of which the Prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and promptly prepare an amendment to the Registration Statement and supplement to the Prospectus to correct such untrue statement or omission, and deliver a number of copies of such supplement and amendment to the Investors as any Investor may reasonably request;

(f) As promptly as practicable after becoming aware of such event, notify the Investors (or, in the event of an underwritten offering, the managing underwriters) of the issuance by the Commission of any stop order or other suspension of the effectiveness of the Registration Statement and take all lawful action to effect the withdrawal, rescission or removal of such stop order or other suspension;

(g) Take all such other lawful actions reasonably necessary to expedite and facilitate the disposition by the Investors of his Registrable Securities in accordance with the intended methods therefor provided in the Prospectus which are customary under the circumstances;

(h) Make generally available to its security holders as soon as practicable, but in any event not later than 18 months after the Effective Date of the Registration Statement, an earnings statement of the Company and its Subsidiary complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder;

(i) In the event of an underwritten offering, promptly include or incorporate in a Prospectus supplement or post effective amendment to the Registration Statement such information as the underwriters reasonably agree should be included therein and to which the Company does not reasonably object and make all required filings of such Prospectus supplement or post effective amendment as soon as practicable after it is notified of the matters to be included or incorporated in such Prospectus supplement or post effective amendment;

(j) Make reasonably available for inspection by the Investors, any underwriter participating in any disposition pursuant to the Registration Statement, and any attorney, accountant or other agent retained by the Investors or any such underwriter all relevant financial and other records, pertinent corporate documents and properties of the Company and its Subsidiary, and cause the Company’s officers, directors and employees to supply all information reasonably requested by the Investors or any such underwriter, attorney, accountant or agent in

connection with the Registration Statement, in each case, as is customary for similar due diligence examinations; provided, however, that all records, information and documents that are designated in writing by the Company, in good faith, as confidential, proprietary or containing any nonpublic information shall be kept confidential by the Investors and any such underwriter, attorney, accountant or agent (pursuant to an appropriate confidentiality agreement in the case of any such holder or agent), unless such disclosure is made pursuant to judicial process in a court proceeding (after first giving the Company an opportunity promptly to seek a protective order or otherwise limit the scope of the information sought to be disclosed) or is required by law, or such records, information or documents become available to the public generally or through a third party not in violation of an accompanying obligation of confidentiality; and provided, further, that, if the foregoing inspection and information gathering would otherwise disrupt the Company's conduct of its business, such inspection and information gathering shall, to the maximum extent possible, be coordinated on behalf of the Investors and the other parties entitled thereto by one firm of counsel designated by and on behalf of the majority in interest of the Investors and other parties;

(k) In connection with any offering, make such representations and warranties to the Investors and to the underwriters if an underwritten offering, in form, substance and scope as are customarily made by a company to underwriters in secondary underwritten offerings;

(l) In connection with any underwritten offering, deliver such documents and certificates as may be reasonably required by the underwriters;

(m) Cooperate with each Investor to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Registration Statement, which certificates shall, if required under the terms of this Agreement, be free of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as such Investor may request and maintain a transfer agent for the Common Stock;

(n) Use its commercially reasonable efforts to cause all Registrable Securities covered by the Registration Statement to be listed or qualified for trading on the principal Trading Market, if any, on which the Common Stock is traded or listed on the Effective Date of the Registration Statement; and

(o) Unless and to the extent that such Plan of Distribution requires modification due to inaccuracy due to changes in the plan of distribution of Investors, or due to a change in SEC regulations, to use the Plan of Distribution attached hereto as Exhibit B in each Prospectus and Registration Statement.

Section 3.3. **Obligations and Acknowledgements of the Investors**. In connection with the registration of the Registrable Securities, each Investor, severally, shall have the following obligations with respect to such Investor and hereby make the following acknowledgements:

(a) It shall be a condition precedent to the obligations of the Company to include the Registrable Securities in the Registration Statement that such Investor (i) shall

furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and (ii) shall execute such documents in connection with such registration as the Company may reasonably request. At least five Business Days prior to the first anticipated filing date of a Registration Statement, the Company shall notify such Investor of the information the Company requires from such Investor (the "**Requested Information**") if such Investor elects to have any of its Registrable Securities included in the Registration Statement. If at least two Business Days prior to the anticipated filing date the Company has not received the Requested Information from such Investor, then the Company may file the Registration Statement without including any Registrable Securities of such Investor and the Company shall have no further obligations under this Article 3 to such Investor after such Registration Statement has been declared effective. If such Investor notifies the Company and provides the Company the information required hereby prior to the time the Registration Statement is declared effective, the Company will file an amendment to the Registration Statement that includes the Registrable Securities of such Investor; provided, however, that the Company shall not be required to file such amendment to the Registration Statement at any time less than five Business Days prior to the Effectiveness Date.

(b) Such Investor agrees to cooperate with the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of its Registrable Securities from such Registration Statement; and

(c) Such Investor agrees that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 3.2(e) or 3.2(f), such Investor shall immediately discontinue such Investor's disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3.2(e) and, if so directed by the Company, such Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in such Investor's possession (other than one copy of any documents not filed with the SEC for evidentiary purposes), of the Prospectus covering such Registrable Securities current at the time of receipt of such notice.

Section 3.4. **Expenses of Registration**. All expenses (other than underwriting discounts and commissions and the fees and expenses of the Investors' counsel) incurred in connection with registrations, filings or qualifications pursuant to this Article 3, including, without limitation, all registration, listing, and qualifications fees, printing and engraving fees, accounting fees, and the fees and disbursements of counsel for the Company, shall be borne by the Company.

Section 3.5. **Accountant's Letter**. If the Investors propose to engage in an underwritten offering, the Company shall deliver to the Investors, at the Company's expense, a letter dated as of the effective date of each Registration Statement or Post-Effective Amendment thereto, from the independent public accountants retained by the Company, addressed to the underwriters and to the Investors, in form and substance as is customarily given in an

underwritten public offering, provided that such seller has made such representations and furnished such undertakings as the independent public accountants may reasonably require;

Section 3.6. **Indemnification and Contribution**

(a) **Indemnification by the Company**. The Company shall indemnify and hold harmless the Investors and each underwriter, if any, which facilitates the disposition of Registrable Securities, and each of their respective officers and directors and each Person who controls such underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each such Person being sometimes hereinafter referred to as an "**Indemnified Person**") from and against any losses, claims, damages or liabilities, joint or several, to which such Indemnified Person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, not misleading, or arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Prospectus or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Company hereby agrees to reimburse such Indemnified Person for all reasonable legal and other expenses incurred by them in connection with investigating or defending any such action or claim as and when such expenses are incurred; provided, however, that the Company shall not be liable to any such Indemnified Person in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon (i) an untrue statement or alleged untrue statement made in, or an omission or alleged omission from, such Registration Statement or Prospectus in reliance upon and in conformity with written information furnished to the Company by such Indemnified Person expressly for use therein or (ii) in the case of the occurrence of an event of the type specified in Section 3.2(e), the use by the Indemnified Person of an outdated or defective Prospectus after the Company has provided to such Indemnified Person an updated Prospectus correcting the untrue statement or alleged untrue statement or omission or alleged omission giving rise to such loss, claim, damage or liability.

(b) **Indemnification by Investor**. Each Investor, severally, agrees, as a consequence of the inclusion of any of such Investor's Investor Registrable Securities in a Registration Statement to (i) indemnify and hold harmless the Company, its directors (including any person who, with his or her consent, is named in the Registration Statement as a director nominee of the Company), its officers who sign any Registration Statement and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or such other persons may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (A) an untrue statement or alleged untrue statement of a material fact contained in such Registration Statement or Prospectus or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in light of the circumstances under which they were made, in the case of the Prospectus), not misleading, in each case to the extent, but only to the extent, that such untrue

statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use therein or (B) the use by such Investor of an outdated Prospectus from and after receipt by such Investor of a notice pursuant to Section 3.2(e), and (ii) reimburse the Company for any legal or other expenses incurred by the Company in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that such Investor shall not be liable under this Section 3.6(b) for any amount in excess of the net proceeds paid to such Investor in respect of Registrable Securities sold by it.

(c) **Notice of Claims, etc**. Promptly after receipt by a Person seeking indemnification pursuant to this Section 3.6 (an "**Indemnified Party**") of written notice of any investigation, claim, proceeding or other action in respect of which indemnification is being sought (each, a "**Claim**"), the Indemnified Party promptly shall notify the Person against whom indemnification pursuant to this Section 3.6 is being sought (the "**Indemnifying Party**") of the commencement thereof; but the omission to so notify the Indemnifying Party shall not relieve it from any liability that it otherwise may have to the Indemnified Party, except to the extent that the Indemnifying Party is materially prejudiced and forfeits substantive rights and defenses by reason of such failure. In connection with any Claim as to which both the Indemnifying Party and the Indemnified Party are parties, the Indemnifying Party shall be entitled to assume the defense thereof. Notwithstanding the assumption of the defense of any Claim by the Indemnifying Party, the Indemnified Party shall have the right to employ separate legal counsel and to participate in the defense of such Claim, and the Indemnifying Party shall bear the reasonable fees, out of pocket costs and expenses of such separate legal counsel to the Indemnified Party if (and only if): (i) the Indemnifying Party shall have agreed to pay such fees, costs and expenses, (ii) the Indemnified Party shall reasonably have concluded that representation of the Indemnified Party by the Indemnifying Party by the same legal counsel would not be appropriate due to actual or, as reasonably determined by legal counsel to the Indemnified Party, potentially differing interests between such parties in the conduct of the defense of such Claim, or if there may be legal defenses available to the Indemnified Party that are in addition to or disparate from those available to the Indemnifying Party (other than that the Indemnified Party is entitled to be indemnified by the Indemnifying Party), or (iii) the Indemnifying Party shall have failed to employ legal counsel reasonably satisfactory to the Indemnified Party within a reasonable period of time after notice of the commencement of such Claim. If the Indemnified Party employs separate legal counsel in circumstances other than as described in the preceding sentence, the fees, costs and expenses of such legal counsel shall be borne exclusively by the Indemnified Party. Except as provided above, the Indemnifying Party shall not, in connection with any Claim in the same jurisdiction, be liable for the fees and expenses of more than one firm of counsel for the Indemnified Party (together with appropriate local counsel). The Indemnified Party shall not, without the prior written consent of the Indemnifying Party (which consent shall not unreasonably be withheld), settle or compromise any Claim or consent to the entry of any judgment that does not include an unconditional release of the Indemnifying Party from all liabilities with respect to such Claim or judgment or contain any admission of wrongdoing.

(d) **Contribution**. If the indemnification provided for in this Section 3.6 is unavailable to or insufficient to hold harmless an Indemnified Party in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each

Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the Indemnified Party in connection with the statements or omissions or alleged statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such Indemnifying Party or by such Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 3.6(d) were determined by pro rata allocation (even if the Investors or any underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 3.6(d). The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) **Limitation on Investors' Obligations**. Notwithstanding any other provision of this Section 3.6, in no event shall any Investor have any liability under this Section 3.6 for any amounts in excess of the dollar amount of the proceeds actually received by such Investor from the sale of Registrable Securities (after deducting any fees, discounts and commissions applicable thereto) pursuant to any Registration Statement under which such Registrable Securities are registered under the Securities Act.

(f) **Other Liabilities**. The obligations of the parties under this Section 3.6 shall be in addition to any liability which such party may otherwise have to any Indemnified Person and the obligations of any Indemnified Person under this Section 3.6 shall be in addition to any liability which such Indemnified Person may otherwise have to any other party. The remedies provided in this Section 3.6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an indemnified party at law or in equity.

Section 3.7. **Rule 144**. With a view to making available to the Investors the benefits of Rule 144 or any successor thereto, until the shares are eligible for sale without volume limitations, the Company agrees to use its best efforts to:

(i) comply with the provisions of paragraph (c)(1) of Rule 144 or any successor thereto; and

(ii) file with the Commission in a timely manner all reports and other documents required to be filed by the Company pursuant to Section 13 or 15(d) under the Exchange Act; and, if at any time it is not required to file such reports but in the past had been required to or did file such reports, it will, upon the request of any Investor, make available other

information as required by, and so long as necessary to permit sales of, its Registrable Securities pursuant to Rule 144 or any successor thereto.

Section 3.8. **Common Stock Issued Upon Stock Split, etc**. The provisions of this Article 3 shall apply to any shares of Common Stock or any other securities issued as a dividend or distribution in respect of the Warrant Shares.

ARTICLE 4

OTHER AGREEMENTS OF THE PARTIES

Section 4.1. **Certificates; Legends**.

(a) The Securities may only be transferred in compliance with state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, or (iii) by an Investor to an Affiliate of such Investor, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act or applicable state securities laws. In the event of a private transfer of the Securities the Transferee shall be required to execute a counterpart to this Agreement, agreeing to be bound by (and shall have the benefits of) the terms hereof other than those set forth in Article 2 hereof, and such Transferee shall be deemed to be an "Investor" for purposes of this Agreement.

(b) The certificate representing the Warrant to be delivered at the Closing and the certificates evidencing the Warrant Shares to be delivered upon exercise of the Warrant will contain appropriate legends referring to restrictions on transfer relating to the registration requirements of the Securities Act and applicable state securities laws.

(c) In connection with any sale or disposition of the Securities by such Investor pursuant to Rule 144 or pursuant to any other exemption under the 1933 Act such that the purchaser acquires freely tradable shares and upon compliance by such Investor with the requirements of this Agreement, the Company shall or, in the case of Common Stock, shall cause the transfer agent for the Common Stock (the "**Transfer Agent**") to issue replacement certificates representing the Securities sold or disposed of without restrictive legends. Upon the earlier of (i) registration for resale pursuant to the Registration Rights Agreement or (ii) the Warrant Shares becoming freely tradable without restriction pursuant to Rule 144 the Company shall (A) deliver to the Transfer Agent irrevocable instructions that the Transfer Agent shall reissue a certificate representing shares of Common Stock without legends upon receipt by such Transfer Agent of the legended certificates for such shares, and, in the case of a proposed sale pursuant to Rule 144, a customary representation by such Investor that the conditions required to freely sell the shares of Common Stock represented thereby without restriction pursuant to Rule 144 have been satisfied, and (B) cause its counsel to deliver to the Transfer Agent one or more opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act. From and after the earlier of such dates, upon such Investor's written

request, the Company shall promptly cause certificates evidencing such Investor's Securities to be replaced with certificates which do not bear such restrictive legends, and Warrant Shares subsequently issued upon due exercise of the Warrants shall not bear such restrictive legends, provided the provisions of either clause (i) or clause (ii) above, as applicable, are satisfied with respect to such Warrant Shares. When the Company is required to cause an unlegended certificate to replace a previously issued legended certificate, if: (1) the unlegended certificate is not delivered to such Investor within three (3) Business Days of submission by such Investor of a legended certificate and supporting documentation to the Transfer Agent as provided above and (2) prior to the time such unlegended certificate is received by such Investor, such Investor, or any third party on behalf of such Investor or for such Investor's account, purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Investor of shares represented by such certificate (a "**Buy-In**"), then the Company shall pay in cash to such Investor (for costs incurred either directly by such Investor or on behalf of a third party) the amount by which the total purchase price paid for Common Stock as a result of the Buy-In (including brokerage commissions, if any) exceeds the proceeds received by such Investor as a result of the sale to which such Buy-In relates. Such Investor shall provide the Company written notice indicating the amounts payable to such Investor in respect of the Buy-In.

Section 4.2. **Integration**. The Company has not and shall not, and shall use its best efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the issuance of the Securities to the Investors, or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market in a manner that would require stockholder approval of the sale of the securities to the Investors.

Section 4.3. **Securities Laws Disclosure; Publicity**. By 5:00 p.m. (New York time) on the Trading Day following the execution of this Agreement, and by 5:00 p.m. (New York time) on the Trading Day following the Closing Date, the Company shall issue press releases disclosing the material terms of the transactions contemplated hereby and the Closing, and the Company shall file Current Reports on Form 8-K disclosing the material terms of the Transaction Documents and the Closing. In addition, the Company will make such other filings and notices in the manner and time required by the Commission and the Trading Market on which the Common Stock is listed.

Section 4.4. **Use of Proceeds**. The Company shall use the net proceeds from the sale of the Securities hereunder (i) for working capital purposes, (ii) for use in the Company's business, or (iii) for investment in new technologies related to the Company's business (including without limitation through the acquisition of other companies).

Section 4.5. **Prospectus Delivery Requirements**. Each Investor, severally, agrees that such Investor will not effect any sale, transfer or other disposition of any Securities except pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution

set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in Section 3.1 is predicated upon the Company's reliance upon this understanding.

Section 4.6. **Reservation of Common Stock**. From and after the Closing Date, the Company shall reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue the Warrant Shares pursuant to any exercise of the Warrants.

Section 4.7. **Disclosure of Information**. Except upon the prior written consent of an Investor, the Company shall not disclose any material non-public information to such Investor or such Investor's counsel. Any such disclosure shall be made pursuant to an in accordance with a customary non-disclosure agreement between the Company and such Investor.

Section 4.8. **Authorization of Additional Common Stock**. The Company shall propose, at the next meeting of its stockholders, an amendment to the Company's Certificate of Incorporation the effect of which will be to increase the number of authorized shares of Common Stock of the Company by not less than 6,000,000 shares. The Company shall use its best efforts to secure the adoption of such amendment at such meeting of stockholders.

ARTICLE 5

CONDITIONS PRECEDENT TO CLOSING

Section 5.1. **Conditions Precedent to the Obligations of the Investors to Acquire Securities**. The obligation of the Investor to acquire Securities is subject to the satisfaction or waiver by the Investors, at or before the Closing, of each of the following conditions:

(a) **Representations and Warranties**. The representations and warranties of the Company contained herein are true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of such Closing Date;

(b) **Performance**. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing;

(c) **No Injunction**. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents;

(d) **No Adverse Changes**. Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably could have or result in a Material Adverse Effect; and

(e) **Company Deliverables**. The Company shall have delivered the Company Deliverables in accordance with Section 2.4.

Section 5.2. **Conditions Precedent to the Obligations of the Company to Issue Securities**. The obligation of the Company to issue Securities is subject to the satisfaction or waiver by the Company, at or before the Closing, of each of the following conditions:

(a) **Representations and Warranties**. The representations and warranties of the Investors contained herein shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of such date;

(b) **Performance**. The Investors shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Investors at or prior to the Closing and the Lender shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Lender at or prior to the Closing under the Purchase Agreement; and

(c) **No Injunction**. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

ARTICLE 6

MISCELLANEOUS

Section 6.1. **Fees and Expenses**. Each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of the Transaction Documents.

Section 6.2. **Entire Agreement**. The Transaction Documents, together with the Exhibits thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents and exhibits.

Section 6.3. **Notices**. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the facsimile number specified in this Section prior to 6:30 p.m. on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Business Day or later than 6:30 p.m. on any Business Day, (c) the Business Day following the date of transmission, if sent by a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses for such notices and communications shall be as follows:

If to the Company:

Energy Focus, Inc.
32000 Aurora Road
Solon, Ohio 44139
Facsimile: 440.519.1038
Attention: Mr. Joseph G. Kaveski, Chief Executive Officer

With a copy to:

Cowden & Humphrey Co. LPA
4600 Euclid Avenue, Suite 400
Cleveland, Ohio 44103-3758
Facsimile: 216.241.2881
Attention: Mr. Gerald W. Cowden

If to the Investors, at the address set forth for each Investor in Schedule I.

With a copy to:

Brouse McDowell LLP
388 S. Main Street
Akron, Ohio 44311
Facsimile No.: 330-253-8601
Attention: James S. Hogg, Esq.

or such other address as may be designated by any Investor or the Company in writing, in the same manner, by such Person.

Section 6.4. **Amendments; Waivers**. No provision of this Agreement may be waived or amended except in a written instrument signed by the Company and Investors holding a majority of the Registrable Securities. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

Section 6.5. **Termination**. This Agreement may be terminated prior to the Closing by written agreement of the Investors holding a majority of the Registrable Securities and the Company. Upon a termination in accordance with this Section 6.5, the Company and the Investors shall have no further obligation or liability (including as arising from such termination) to the other, provided that any liabilities arising prior to such termination shall not be affected by the termination.

Section 6.6. **Construction**. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any of the Transaction Documents.

Section 6.7. **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties and their successors, and permitted assigns. Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party.

Section 6.8. **No Third-Party Beneficiaries**. This Agreement is intended for the benefit of the parties hereto, and their heirs, representatives, successors, and permitted assigns, and their affiliated Persons that are parties to the Asset Purchase Agreement, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

Section 6.9. **Governing Law; Jurisdiction**. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and of the United States, without giving effect to the doctrine of conflicts of laws. The parties each agree that the federal and state courts located within the State of Delaware, the State of Ohio, and the State of Tennessee shall have nonexclusive jurisdiction as to all matters, actions, claims or disputes arising out of this Agreement or the transactions contemplated hereby.

Section 6.10. **Survival**. The representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery of the Securities; provided, however, that the representations and warranties shall expire one month after the Company files its Annual Report on Form 10-K for the period ending December 31, 2010.

Section 6.11. **Execution**. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof, notwithstanding any subsequent failure or refusal of the signatory to deliver an original executed in ink.

Section 6.12. **Severability**. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefore, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

Section 6.13. **Replacement of Securities**. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefore, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities. If a replacement certificate or instrument evidencing any Securities

is requested due to a mutilation thereof, the Company may require delivery of such mutilated certificate or instrument as a condition precedent to any issuance of a replacement.

Section 6.14. **Remedies**. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Investors and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that, except as expressly set forth herein with respect to liquidated damages, monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agrees to waive in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first indicated above.

COMPANY:

ENERGY FOCUS, INC.

By: _____
Name: Joseph G. Kaveski
Its: Chief Executive Officer

INVESTORS:

THE BARRETT FAMILY TRUST

By: _____
Donald A. Barrett, Trustee

And by: _____
Karen A. Barrett, Trustee

_____
R. Thomas Green, Jr.

_____
Marc Martter

JKZ PROPERTIES, LTD

By: _____
Joseph Zeno
Managing Partner

ALEXANDER S. TAYLOR FAMILY TRUST

By: _____
Alexander S. Taylor, Trustee

DKE WEBB LLC

By: _____
David Webb
Title: _____

_____
James M. Wiles

_____
Larry Wright

Schedule I

Investors

Name	Address	Number of Warrant Shares
R. Thomas Green Jr.	35 Cohasset Drive Hudson, Ohio 44236	10,000
Donald A Barrett and Karen A Barrett ttees The Barrett Family Trust u/a/d 9-18-06	431 West Main Street Kent, Ohio 44240	10,000
Alexander S. Taylor Family Trust U/A/D 6/9/97	510 Dogwood Lane Chagrin Falls, Ohio 44023	10,000
DKE Webb LLC	c/o David Webb 361 Wallace Road Lake Forest, Illinois 60045	40,000
James M. Wiles	Wiles, Boyle, Burkholder 300 Spruce Street Floor One Columbus, Ohio 43215	40,000
	380 Fifth Street PO Box 510762 Key Colony Beach, Florida 33051	
Marc Martter	Apt #6 501 East Ocean Drive P.O. Box 510169 Key Colony Beach, Florida 33051	10,000
	1130 By The Shores Drive Unit #1 Huron, Ohio 44839	
JKZ Properties, LTD	Joseph Zeno, Mng. Partner 4534 Barnsleigh Drive Akron, Ohio 44333	100,000
Larry Wright	418 North Water Street Kent, Ohio 44240	10,000

EXHIBIT A

Form of Warrant

EXHIBIT B

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;

- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;

- an exchange distribution in accordance with the rules of the applicable exchange;

- privately negotiated transactions;

- short sales effected after the date the registration statement of which this Prospectus is a part is declared effective by the SEC;

- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;

- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share; and

- a combination of any such methods of sale.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares

of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be “underwriters” within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are “underwriters” within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which the shares may be sold without restriction pursuant to Rule 144 of the Securities Act.

EXHIBIT 21.1

SUBSIDIARIES

Name	Location	Doing Business as
Stones River Companies, LLC	Nashville, Tennessee	Stones River Companies, LLC
Crescent Lighting, Ltd	Thatcham, Berkshire, United Kingdom	Crescent Lighting Limited

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 31, 2010, with respect to the consolidated financial statements (which report expressed an unqualified opinion and contains an explanatory paragraph relating to substantial doubt about Energy Focus, Inc.'s ability to continue as a going concern) and schedule in the Annual Report of Energy Focus, Inc. on Form 10-K for the year ended December 31, 2009. We hereby consent to the incorporation by reference of said report in the Registration Statements on Form S-8 (File No. 333-138963, effective November 27, 2006; File No. 333-122686, effective February 10, 2005; File No. 333-68844, effective August 31, 2001; File No. 333-52042, effective December 18, 2000; File No. 333-61855, effective August 19, 1998; File No. 333-28423, effective June 4, 1997; and File No. 333-85664, effective October 27, 1994) and on Form S-3 (File No. 333-108083 effective, September 28, 2007 and File No. 333-150176 effective, May 29, 2008).

/s/ Plante & Moran, PLLC

Cleveland, Ohio
March 31, 2010

EXHIBIT 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 30, 2009, with respect to the consolidated financial statements and schedule in the Annual Report of Energy Focus, Inc. on Form 10-K for the year ended December 31, 2008. We hereby consent to the incorporation by reference of said report in the Registration Statements on Form S-8 (File No. 333- 138963, effective November 27, 2006; File No. 333-122686, effective February 10, 2005; File No. 333-68844, effective August 31, 2001; File No. 333-52042, effective December 18, 2000; File No. 333-61855, effective August 19, 1998; File No. 333-28423, effective June 4, 1997; and File No. 333-85664, effective October 27, 1994) and on Form S-3 (File No. 333-108083 effective, September 28, 2007 and File No. 333-150176 effective, May 29, 2008).

/s/ Grant Thornton, LLP

Cleveland, Ohio
March 31, 2010

EXHIBIT 24.1

ENERGY FOCUS INC.

2009 ANNUAL REPORT ON FORM 10-K

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS: That each person whose name is signed below has made, constituted, and appointed, and by this instrument does make, constitute, and appoint, Joseph G. Kaveski or Nicholas G. Berchtold his true and lawful attorney for him and in his name, place, and stead, with power of substitution, to subscribe, as attorney-in-fact, his signature as Director or Officer or both, as the case may be, of Energy Focus, Inc., a Delaware corporation, to its Annual Report on Form 10-K for the year ended December 31, 2009, and to any and all amendments to that Annual Report, hereby giving and granting to each attorney-in-fact full power and authority to do and perform every act and thing necessary to be done in the premises, as fully as he might or could do if personally present, hereby ratifying and confirming all that each attorney-in-fact shall lawfully do or cause to be done by virtue hereof.

This Power of Attorney shall not apply to any Annual Report on Form 10-K or amendment thereto filed after December 31, 2010.

IN WITNESS WHEREOF, this Power of Attorney has been signed as of March 31, 2010.

/s/ Joseph G. Kaveski
Joseph G. Kaveski
Chief Executive Officer and Director
Principal Executive Officer

/s/ Nicholas G. Berchtold
Nicholas G. Berchtold
Vice President of Finance and Chief Financial Officer
Principal Financial and Accounting Officer

/s/ John M. Davenport
John M. Davenport
President and Director

/s/ R. Louis Schneeberger
R. Louis Schneeberger
Director

/s/ Michael A. Kasper
Michael A. Kasper
Director

/s/ Paul von Paumgartten
Paul von Paumgartten
Director

/s/ David N. Ruckert
David N. Ruckert
Director

/s/ Philip E. Wolfson
Philip E. Wolfson
Director

/s/ J. James Finnerty
J. James Finnerty
Director

/s/ David Anthony
David Anthony
Director

EXHIBIT 31.1

CERTIFICATION

I, Joseph G. Kaveski, certify that:

1. I have reviewed this annual report on Form 10-K of Energy Focus, 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 officer 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 we 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 consolidated 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; and

(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 officer 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 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

(a) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: March 31, 2010

/s/ Joseph G. Kaveski
Joseph G. Kaveski
Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION

I, Nicholas G. Berchtold, certify that:

1. I have reviewed this annual report on Form 10-K of Energy Focus, 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 officer 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 we 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 consolidated 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; and

(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 officer 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 controls over financial reporting.

Date: March 31, 2010

/s/ Nicholas G. Berchtold
Nicholas G. Berchtold
Vice President of Finance and Chief Financial Officer

EXHIBIT 32.1

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

I, Joseph G. Kaveski, the Chief Executive Officer of Energy Focus, Inc. ("the company"), certify for the purposes of section 1350 of chapter 63 of title 18 of the United States Code that, to the best of my knowledge:

(i) the Annual Report of the company on Form 10-K for the year ended December 31, 2009 (the "Report"), fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

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

/s/ Joseph G. Kaveski
Joseph G. Kaveski
March 31, 2010

A signed original of this written statement required by Section 906 has been provided to Energy Focus, Inc. and will be retained by Energy Focus, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

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

I, Nicholas G. Berchtold, the Chief Financial Officer of Energy Focus, Inc. ("the company"), certify for the purposes of section 1350 of chapter 63 of title 18 of the United States Code that, to the best of my knowledge:

(i) the Annual Report of the company on Form 10-K for the year ended December 31, 2009 (the "Report"), fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

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

/s/ Nicholas G. Berchtold
Nicholas G. Berchtold
March 31, 2010

A signed original of this written statement required by Section 906 has been provided to Energy Focus, Inc. and will be retained by Energy Focus, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.