

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

AMENDMENT NO. 2 ON  
FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

**Reed's, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or jurisdiction of  
incorporation or organization)

**2086**  
(Primary Standard Industrial  
Classification Code Number)

**35-2177773**  
(I.R.S. Employer  
Identification Number)

**13000 South Spring Street  
Los Angeles, California 90061  
(310) 217-9400**

(Address and telephone number of principal executive offices and principal place of business)

**Christopher J. Reed  
Chief Executive Officer  
13000 South Spring Street  
Los Angeles, California 90061  
(310) 217-9400**

(Name, address and telephone number of agent for service)

*With copies to:*

<b>Ruba Qashu Qashu &amp; Schoenthaler LLP 1801 Century Park East, 25th Floor Los Angeles, California 90067 Telephone: (310) 773-5953 Facsimile: (866) 313-3040</b>		<b>Joseph A. Smith Weinstein Smith LLP 420 Lexington Avenue, Suite 2620 New York, NY 10170 Telephone: 212-616-3007 Direct: 212-931-8719 Fax: 212-401-4741</b>
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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective Registration Statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b2 of the Exchange Act.

Large accelerated filer

Accelerated filer

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

Smaller reporting company

#### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (1)	Estimated Proposed Maximum Aggregate Offering Price (4)	Amount of Registration Fee
Transferable Subscription Rights ("Rights") to purchase Series B Convertible Preferred Stock, \$0.0001 par value per share ("Series B Preferred")	—	—	—	— (2)
Shares of Series B Preferred Stock underlying the Rights	300,000	\$10.00	\$3,000,000	\$167.40 (3)
Shares of common stock underlying the Series B Preferred	—	—	—	— (4)
Total	300,000	\$10.00	\$3,000,000	\$167.40 (5)

- (1) This registration statement relates to (a) the subscription rights to purchase Series B Preferred (b) the shares of Series B Convertible Preferred Stock ("Series B Preferred") deliverable upon the exercise of the rights and (3) the shares of common stock issuable upon conversion of the Series B Preferred ..
- (2) The rights are being issued without consideration. Pursuant to Rule 457(g), no separate registration fee is payable with respect to the rights being offered hereby since the rights are being registered in the same registration statement as the securities to be offered pursuant thereto.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
- (4) The securities being registered also include (A) such additional indeterminate number of shares of common stock as may be issued upon (i) conversion of the Series B Preferred and (ii) the payment of dividends, at the option of the company, on the Series B Preferred and (B) such indeterminate number of shares of Series B Preferred as may be issued upon payment of dividends in kind, at the option of the company, on the Series B Preferred. Pursuant to Rule 457(i), no separate fee is payable with respect to the common stock underlying the Series B Convertible Preferred Stock. In accordance with Rule 416, the number of shares registered hereby shall also be deemed to include an indeterminate number of additional shares of common stock that may be issued upon conversion of the Series B Convertible Preferred Stock as a result of anti-dilution provisions thereof.
- (5) Calculated pursuant to Rule 457(g) based on the aggregate exercise price of the rights.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Preliminary Prospectus**

**Subject To Completion, Dated June 23 , 2009**

## **REED'S INC.**

### **10,000,000 Transferable Rights to Subscribe for up to 300,000 Shares of Series B Convertible Preferred Stock at \$10.00 per Share**

We are distributing at no charge to the holders of our common stock on [ ], 2009, which we refer to as the record date, subscription rights to purchase up to an aggregate of 300,000 shares of our Series B Preferred. We will distribute to you one right for every share of common stock that you own on the record date. Each share of Series B Preferred carries an eight percent (8%) annual dividend for a term of three (3) years ,will have an initial stated value of \$10.00 per share, and will be convertible into shares of our common stock at a conversion ratio of [ ] shares of common stock for each share of Series B Preferred held at the time of conversion, representing an initial conversion price of \$[ ] per share, which is subject to adjustment.

You are receiving this prospectus because you held shares of our common stock as of the close of business on June [ ], 2009, the record date for this rights offering. As of the record date, there are [ ] shares of common stock outstanding. We have granted you one right for each share of our common stock that you owned on the record date. You may purchase one share of our Series B Preferred for every four (4) rights granted to you. If you exercise your rights in full, you may also concurrently exercise an over-subscription right to purchase additional shares of Series B Preferred that remain unsubscribed at the expiration of the rights offering, subject to availability and allocation of shares among persons exercising this over-subscription right. . The over-subscription rights allow a holder to subscribe for an additional amount equal to up to 400% of the shares for which such holder was otherwise entitled to subscribe. The exercise price for over-subscription rights is the same as the exercise price per whole share as the basic subscription rights. Rights may only be exercised for whole numbers of shares; no fractional shares of Series B Preferred will be issued in this offering.

We intend to offer any shares of Series B Preferred that remain unsubscribed (after taking into account all over- subscription rights exercised) at the expiration of the rights offering to the public at \$10.00 per share of Series B Preferred.

The rights will expire at 5:00 p.m., New York City time, on [ ], 2009, which date we refer to as the expiration date. If the rights offering is undersubscribed, we may extend the period for exercising the rights for up to an additional 30 trading days in our sole discretion. A "trading day" is any day the NASDAQ Stock Market is open for trading. Any rights not exercised at or before that time will expire worthless without any payment to the holders of those unexercised rights. There is no minimum subscription amount required for consummation of the rights offering. We will raise no more than \$3,000,000 in this offering.

You should carefully consider whether to exercise your subscription rights before the expiration date. All exercises of subscription rights are irrevocable. Our board of directors is making no recommendation regarding your exercise of the subscription rights. **Investing in our securities involves a high degree of risk. In addition, your holdings in our company will be diluted if you do not exercise the full amount of your basic subscription rights. See "Risk Factors" beginning on page 17 of this prospectus.**

Our common stock is quoted on the NASDAQ Capital Market under the symbol "REED." The last reported sale price of our common stock on June [ ], 2009 was \$[ ] per share. The rights are transferable and will be listed for trading on the NASDAQ Capital Market under the symbol "REEDR" during the course of this offering. We intend to apply to the OTC Bulletin Board for quotation of our Series B Preferred. We cannot assure you that our Series B Preferred will meet the requirements for quotation or that there will be an active trading market for our Series B Preferred.

As of June 16, 2009, the aggregate market value of our outstanding common stock held by non-affiliates was approximately \$10,759,000, based on 9,129,848 shares of outstanding common stock, of which approximately 5,517,231 shares are held by non-affiliates, and a per share price of \$1.95 based on the closing sale price of our common stock on June 16, 2009. As of the date hereof, we have not offered any securities pursuant to General Instruction I.B.6 of Form S-3 during the prior 12 calendar month period that ends on and includes the date hereof.

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	<u>Subscription Price</u>	<u>Dealer Manager Fee (1)</u>	<u>Proceeds, Before Expenses, to us</u>
Per share	\$10.00	\$0.70	\$9.30
Total (2)	\$3,000,000	\$220,000	\$2,780,000

(1) In connection with the rights offering, we have agreed to pay Source Capital Group, Inc., the dealer-manager for this offering, a cash fee equal to 7% of the gross proceeds of this offering in cash and a non-accountable expense allowance equal to \$10,000. We will also grant Source Capital Group, Inc. a warrant to purchase 5% of the shares of common stock underlying Series B Preferred sold in this offering at an exercise price of \$[ ] per share, or 125% of the effective initial conversion price.

(2) Assumes that the rights offering is fully subscribed and that the maximum offering amount in the aggregate of \$3,000,000 is subscribed.

**Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.** The shares of our Series B Preferred offered hereby and our common stock are not deposits, savings accounts, or other obligations of a bank or savings association and are not insured by the FDIC or any other governmental agency.

Our principal executive offices are located at 13000 South Spring Street, Los Angeles, California 90061. Our telephone number is 310-217-9400. If you have any questions or need further information about this rights offering, please contact MacKenzie Partners, Inc., our information agent for the rights offering, at (212) 929-5500 (call collect) or (800) 322-2885 (toll-free) or via email at reedrights@mackenziepartners.com .

***Dealer-Manager***  
**Source Capital Group, Inc.**  
**The date of this prospectus is June , 2009**

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## ABOUT THIS PROSPECTUS

Unless the context otherwise requires, all references to “Reed’s,” “we,” “us,” “our,” “our company,” or similar language in this prospectus refer to Reed’s, Inc., a Delaware corporation.

You should rely only on the information contained in this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. For further information, please see the section of this prospectus entitled “Where You Can Find Additional Information.” We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

You should not assume that the information appearing in this prospectus is accurate as of any date other than the date on the front cover of this prospectus, regardless of the time of delivery of this prospectus or any sale of a security. Our business, financial condition, results of operations and prospects may have changed since those dates.

We obtained statistical data, market data and other industry data and forecasts used throughout this prospectus from market research, publicly available information and industry publications. Industry publications generally state that they obtain their information from sources that they believe to be reliable, but they do not guarantee the accuracy and completeness of the information. Similarly, while we believe that the statistical data, industry data and forecasts and market research are reliable, we have not independently verified the data, and we do not make any representation as to the accuracy of the information. We have not sought the consent of the sources to refer to their reports appearing in this prospectus.

This prospectus contains trademarks, tradenames, service marks and service names of Reed’s, Inc.

**We have not authorized any dealer, agent or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or an accompanying prospectus supplement. This prospectus and the accompanying prospectus supplement, if any, do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus and the accompanying prospectus supplement constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus and the accompanying prospectus supplement, if any, is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus and any accompanying prospectus supplement is delivered or securities are sold on a later date.**

## QUESTIONS AND ANSWERS ABOUT THE RIGHTS OFFERING

The following are examples of what we anticipate may be common questions about the rights offering. The answers are based on selected information from this prospectus. The following questions and answers do not contain all of the information that may be important to you and may not address all of the questions that you may have about the rights offering. This prospectus contains more detailed descriptions of the terms and conditions of the rights offering and provide additional information about us and our business, including potential risks related to the rights offering, our common stock and our business.

Exercising the rights and investing in our securities involves a high degree of risk. We urge you to carefully read the section entitled "Risk Factors" beginning on page 17 of this prospectus and all other information included in this prospectus in its entirety before you decide whether to exercise your rights.

**Q: What is a rights offering?**

A: A rights offering is a distribution of subscription rights on a *pro rata* basis to all existing common stockholders of a company. We are distributing to holders of our common stock, at no charge, as of the close of business on the record date ([ ] 2009), up to 10,000,000 subscription rights to purchase up to an aggregate of 300,000 shares of our Series B Preferred valued, in the aggregate, at up to \$3,000,000. You will receive one subscription right for every share of common stock you own at the close of business on the record date. You may purchase one share of our Series B Preferred for every four (4) rights granted to you. The subscription rights will be evidenced by subscription rights certificates, which may be physical certificates but will more likely be electronic certificates issued through the facilities of the Depository Trust Company, or DTC.

**Q: Why are you undertaking the rights offering?**

A: We are making the rights offering to raise funds primarily for production of inventory and marketing, plus for general working capital purposes. We had approximately \$108,000 of available cash and cash equivalents as of March 31, 2009. If we fail to raise capital by the end of 2009, we would expect to have to significantly decrease operating expenses, which will curtail the growth of our business.

Our board of directors has elected a rights offering over other types of financings because a rights offering provides our existing stockholders the opportunity to participate in this offering first, and our board believes this creates less percentage dilution of stockholder ownership interest in our company than if we issued shares to new investors.

**Q: How much money will Reed's raise as a result of the rights offering?**

A: Assuming full participation in the rights offering, we estimate that the net proceeds from the rights offering will be approximately \$2,673,642, after deducting expenses related to this offering payable by us estimated at approximately \$326,358. We may decide to close the rights offering and accept such proceeds of the basic subscription rights and over-subscription rights as we have received as of the expiration date of the rights offering whether or not they are sufficient to meet the objectives we state in this prospectus, other corporate milestones that we may set, or to avoid a "going concern" modification in future reports of our auditors as to uncertainty with respect to our ability to continue as a going concern. We will raise no more than \$3,000,000 in this offering. See "Risk Factors — Completion of this offering is not subject to us raising a minimum offering amount and proceeds may be insufficient to meet our objectives, thereby increasing the risk to investors in this offering."

**Q: What is a right?**

A: Each right carries with it a basic subscription right and an over-subscription right. Four (4) rights entitle the holder of the rights the opportunity to purchase one share of Series B Preferred at the subscription price of \$10.00 per share. Each right will be evidenced by a transferable rights certificate.

**Q: How does a rights holder transfer a subscription right?**

A: The subscription rights may be transferred or assigned during the subscription period. If your shares are held of record by a broker, custodian bank or other nominee on your behalf, you may sell your subscription rights by contacting your broker, custodian bank or other nominee through which you hold your common stock. If you are a record holder of a subscription rights certificate, you may transfer your subscription rights through the subscription agent, in which case, you must deliver your properly executed subscription rights certificate, with appropriate instructions, to the subscription agent. The subscription agent will only facilitate subdivisions, transfers or sales of subscription rights until 5:00 p.m., New York City time, on June [ ], 2009, [three business days prior] to the scheduled [ ], 2009 expiration date of this rights offering. You may also choose to sell your subscription rights through a broker, custodian bank or other nominee. We intend to apply for quotation of the subscription rights on the NASDAQ Capital Market under the symbol "REEDR" beginning on or about [ ], 2009, until 4:00 p.m., New York City time, on [ ], 2009, the last business day prior to the scheduled expiration date of this rights offering.

**Q: What is a basic subscription right?**

A: Four (4) basic subscription rights give you the opportunity to purchase one share of our Series B Preferred. You may exercise any number of your basic subscription rights or you may choose not to exercise any subscription rights at all.

For example, if you own 400 shares of our common stock on the record date and you are granted one right for every share of our common stock you own at that time, then you have the right to purchase up to 100 shares of Series B Preferred, subject to adjustment to eliminate fractional rights. If you hold your shares in the name of a broker, dealer, custodian bank, trustee or other nominee who uses the services of the DTC, then DTC will notify you of your right to cause them to be exercised.

**Q: What is an over-subscription right?**

A: If you elect to purchase all of the shares available to you pursuant to your basic subscription right, you may also concurrently elect to subscribe for any number of additional shares that may remain unsubscribed as a result of any other stockholders not exercising their basic subscription rights, subject to a *pro rata* adjustment if over-subscription requests exceed shares, as more fully described below. The over-subscription rights allow a holder to subscribe for an additional amount equal to up to 400% of the shares for which such holder was otherwise entitled to subscribe at the same exercise price per whole share as a basic subscription right.

For example, if you own 400 shares of our common stock on the record date, and exercise your basic subscription right to purchase all (but not less than all) 100 shares of Series B Preferred which are available for you to purchase, then, you may also *concurrently* exercise your over-subscription right to purchase up to 400 additional shares of Series B Preferred that remain unsubscribed as a result of any other stockholders not exercising their basic subscription rights, subject to the *pro rata* adjustments described below. Accordingly, if your basic and over-subscription rights are exercised and honored in full, you would receive a total of 500 shares of Series B Preferred in this offering. Payments in respect of over-subscription rights are due at the time payment is made for the basic subscription right.

**Q. What happens if rights holders exercise their respective over-subscription rights to purchase additional shares of Series B Preferred?**

A: We will allocate the remaining available shares *pro rata* among rights holders who exercised their respective over-subscription rights, based on the number of over-subscription shares of Series B Preferred to which they subscribed. The allocation process will assure that the total number of remaining shares available for basic and over-subscriptions is distributed on a *pro rata* basis. The percentage of remaining shares of Series B Preferred each over-subscribing rights holder may acquire will be rounded down to result in delivery of whole shares.

Payments for basic subscriptions and over-subscriptions will be deposited upon receipt by the subscription agent and held in a segregated account with the subscription agent pending a final determination of the number of shares of Series B Preferred to be issued pursuant to the basic and over-subscription rights. If the pro rated amount of shares allocated to you in connection with your basic or over-subscription right is less than your basic or over-subscription request, then the excess funds held by the subscription agent on your behalf will be promptly returned to you without interest or deduction. We will deliver certificates representing your shares of our Series B Preferred or credit your account at your nominee holder with shares of our Series B Preferred that you purchased pursuant to your basic and over-subscription rights as soon as practicable after the rights offering has expired and all proration calculations and reductions contemplated by the terms of the rights offering have been effected.

**Q. Are there any circumstances in which either Reed's could be obligated to distribute subscription rights for a number of shares of Series B Preferred which exceeds its available shares of Series B Preferred? What would happen in this case?**

A: If we receive a sufficient number of basic subscriptions, the aggregate number of exercises could exceed the 300,000 shares of Series B Preferred authorized and available in this offering for issuance. In such a case, we would reduce on a *pro rata* basis, the number of basic subscriptions we accept so that we will not become obligated to issue, upon exercise of the basic subscriptions, a greater number of shares of Series B Preferred than we have authorized and available for issuance. If we have a sufficient number of shares of Series B Preferred available to meet basic subscriptions but receive an excess of over-subscriptions, we would reduce on a *pro rata* basis, the number of over-subscriptions we accept so that we will not become obligated to issue, upon exercise of the over-subscriptions, a greater number of shares of Series B Preferred than we have authorized and available for issuance.

**Q: Will the officers, directors and significant stockholders of Reed’s be exercising their rights?**

A: Our officers, directors and greater than 5% beneficial stockholders may participate in this offering, but none of our officers, directors or greater than 5% beneficial stockholders are obligated to so participate.

**Q: Will the subscription rights and the shares of Series B Preferred that I receive upon exercise of my rights be tradable on the NASDAQ Capital Market?**

A: The subscription rights will be tradable and listed for trading on the NASDAQ Capital Market under the symbol “REEDR” during the term of this offering. We intend to apply to the OTC Bulletin Board for quotation of our Series B Preferred during the course of this offering. We cannot assure you that our Series B Preferred will meet the requirements for quotation or that there will be an active trading market for our Series B Preferred. However, the Series B Preferred will not be subject to any restrictions on transfer.

**Q: How do I exercise my basic subscription right?**

A: You may exercise your subscription rights by properly completing and signing your subscription rights certificate. Your subscription rights certificate, together with full payment of the subscription price, must be received by Continental Stock Transfer & Trust Company, the subscription agent for this rights offering, on or prior to the expiration date of the rights offering. We sometimes refer to Continental Stock Transfer & Trust Company in this prospectus as the subscription agent. Continental Stock Transfer & Trust Company is not the transfer agent and registrar for our common stock.

If you use the mail, we recommend that you use insured, registered mail, return receipt requested. We will not be obligated to honor your exercise of subscription rights if the subscription agent receives the documents relating to your exercise after the rights offering expires, regardless of when you transmitted the documents.

**Q: How do I exercise my over-subscription right?**

A: In order to properly exercise your over-subscription right, you must: (i) indicate on your subscription rights certificate that you submit with respect to the exercise of the rights issued to you how many additional shares of Series B Preferred you are willing to acquire pursuant to your over-subscription right and (ii) *concurrently* deliver the subscription payment related to your over-subscription right at the time you make payment for your basic subscription right. All funds from over-subscription rights that are not honored will be promptly returned to investors, without interest or deduction.

**Q: Am I required to subscribe in the rights offering?**

A: No.

**Q: Will my voting and other rights be diluted if I do not exercise my subscription rights?**

A: Yes. If you do not exercise your subscription rights in full, the percentage of our common stock that you own will decrease, and your voting and other rights will be diluted to the extent that other stockholders exercise their subscription rights to purchase shares of Series B Preferred and such Series B Preferred is converted to common stock. We will raise no more than \$3,000,000 in this offering.

**Q: When will the rights offering expire?**

A: The subscription rights will expire, if not exercised, at 5:00 p.m., New York City time, on [ ], 2009, unless we decide to terminate the rights offering earlier or extend the expiration date for up to an additional 30 trading days in our sole discretion. If we extend the expiration date, you will have at least ten trading days during which to exercise your rights. Any rights not exercised at or before that time will expire without any payment to the holders of those unexercised rights. See “The Rights Offering — Expiration Date and Extensions.” The subscription agent must actually receive all required documents and payments before that time and date.

**Q: Will Reed’s be requiring a minimum dollar amount of subscriptions to consummate the rights offering?**

A: No. There is no minimum subscription requirement to consummate the rights offering. As such, proceeds from this rights offering may not be sufficient to meet the objectives we state in this prospectus, other corporate milestones that we may set, or to avoid a “going concern” modification in future reports of our auditors as to uncertainty with respect to our ability to continue as a going concern.

**Q: Is exercising my subscription rights risky?**

A: The exercise of your subscription rights and over-subscription rights (and the resulting ownership of our common stock) involves a high degree of risk. Exercising your subscription rights means buying shares of our Series B Preferred and should be considered as carefully as you would consider any other equity investment. You should carefully consider the information under the heading “Risk Factors” and all other information included in this prospectus before deciding to exercise your subscription rights.

**Q: After I exercise my subscription rights, can I change my mind and cancel my purchase?**

A: No. Once you send in your subscription rights certificate and payment, you cannot revoke the exercise of either your basic or over-subscription rights. You should not exercise your subscription rights unless you are certain that you wish to purchase shares of our Series B Preferred at the proposed subscription price. Any rights not exercised at or before that time will expire worthless without any payment to the holders of those unexercised rights.

**Q: Can the board of directors cancel or terminate the rights offering?**

A: Yes. Our board of directors may decide to cancel or terminate the rights offering at any time and for any reason before the expiration date. If our board of directors cancels or terminates the rights offering, we will issue a press release notifying stockholders of the cancellation or termination, and any money received from subscribing stockholders will be promptly returned, without interest or deduction.

- Q: What should I do if I want to participate in the rights offering but my shares are held in the name of my broker, dealer, custodian bank, trustee or other nominee?**
- A: Beneficial owners of our shares whose shares are held by a nominee, such as a broker, dealer custodian bank or trustee, must contact that nominee to exercise their rights. In that case, the nominee will complete the subscription rights certificate on behalf of the beneficial owner and arrange for proper payment by one of the methods described above.
- Q: What should I do if I want to participate in the rights offering, but I am a stockholder with a foreign address?**
- A: Subscription rights certificates will not be mailed to foreign stockholders whose address of record is outside the United States and Canada, or is an Army Post Office (APO) address or Fleet Post Office (FPO). If you are a foreign stockholder, you will be sent written notice of this offering. The subscription agent will hold your rights, subject to you making satisfactory arrangements with the subscription agent for the exercise of your rights, and follow your instructions for the exercise of the rights if such instructions are received by the subscription agent at or before 11:00 a.m., New York City time, on [ ], 2009, three business days prior to the expiration date (or, if this offering is extended, on or before three business days prior to the extended expiration date). If no instructions are received by the subscription agent by that time, your rights will expire worthless without any payment to you of those unexercised rights.
- Q: Will I be charged a sales commission or a fee if I exercise my subscription rights?**
- A: We will not charge a brokerage commission or a fee to subscription rights holders for exercising their subscription rights. However, if you exercise your rights through a broker or nominee, you will be responsible for any fees charged by your broker or nominee.
- Q: What is the recommendation of the board of directors regarding the rights offering?**
- A: Neither we, our board of directors, the information agent nor the subscription agent are making any recommendation as to whether or not you should exercise your subscription rights. You are urged to make your decision in consultation with your own advisors as to whether or not you should participate in the rights offering or otherwise invest in our securities and only after considering all of the information included in this prospectus, including the "Risk Factors" section that follows.
- Q: How was the conversion rate of the Series B Preferred established?**
- A: Our Series B Preferred has a stated value equal to the subscription price of \$10.00. Each share of Series B Preferred will be convertible into shares of our common stock at a conversion ratio of [ ] shares of common stock for each share of Series B Preferred held at the time of conversion, representing an initial conversion price of \$[ ] per share, which is subject to adjustment. The conversion rate for the shares of Series B Preferred in this offering was set by our board of directors. The conversion price approximates a slight premium to the current trading value of our common stock as of the date of this prospectus. The subscription price does not necessarily bear any relationship to the book value of our assets, results of operations, cash flows, losses, financial condition or any other established criteria for value. You should not consider the subscription price as an indication of the value of the Series B Preferred. As of the date of this prospectus, our common stock traded below the conversion price.

**Q: What if my rights result in fractional shares?**

A: You may not purchase fractional shares of our Series B Preferred. If your rights would allow you to purchase a fractional share, you may exercise them only by rounding down to and paying for the nearest whole share, or paying for any lesser number of whole shares.

**Q: If I also own shares of Reed's Series A Convertible Preferred Stock, will I receive rights on those shares?**

A: No, unless you convert one or more shares of your Series A Convertible Preferred Stock into shares of our common stock before \_\_\_\_\_, 2009, the record date for this rights offering. If you elect to convert any or all of your shares of Series A Convertible Preferred Stock, you would no longer be entitled to dividends or other rights incident to the shares of Series A Convertible Preferred Stock that you converted.

**Q: Will the Series B Preferred be traded on any stock exchange or listed on a quotation service?**

A: Yes. We intend to apply to the OTC Bulletin Board for quotation of our Series B Preferred during the course of this offering. We cannot assure you that our Series B Preferred will meet the requirements for quotation or that there will be an active trading market for our Series B Preferred. There is currently no trading market for the Series B Preferred. Conversion into the underlying shares of our common stock and sale of those shares may be the only way for you to liquidate your investment in any shares of Series B Preferred you purchase in the rights offering.

**Q: What are the terms of the Series B Convertible Preferred Stock?**

**Dividends.** Subject to the prior payment in full of any dividends to which any stock specifically ranking by its terms senior to the Series B Preferred is entitled pursuant to the Certificate of Incorporation, the holders of the Series B Preferred shall be entitled to receive dividends payable in kind, in common stock or in cash, in our sole discretion. Such dividends shall be cumulative and non-compounding and accrue on a daily basis for a period of three (3) years from the date of issuance of the Series B Preferred, at an annual rate equal to eight percent (8%) of the original purchase price of \$10.00. If we elect to pay any Series B Dividend due in common stock ("**Interest Shares**"), the issuance price of the Interest Shares will be equal to the 10-day volume-weighted average price of the common stock on the principal national securities exchange on which such common stock is traded.

**Conversion Rights.** Each share of the Series B Preferred will be convertible at the election of the holder into shares of our common stock by dividing the \$10.00 stated value of the Series B Preferred by a conversion price, which will initially be \$[\_\_\_\_\_]. The conversion price will be adjusted to reflect subdivisions or combinations of our common stock such as stock splits, stock dividends, recapitalizations or reverse splits.

**Mandatory Conversion at Our Option.** At any time after the original purchase date, if the closing price of our common stock as reported by the principal exchange or quotation system on which such common stock is traded or reported equals or exceeds \$[\_\_\_\_\_] per share of common stock, then we shall have the right to cause all (but not less than all) outstanding shares of Series B Preferred Stock to be automatically converted into shares of common stock.

**Mandatory Redemption.** At any time after the second anniversary of the original purchase date, we may redeem all, but not less than all, of the outstanding shares of Series B Preferred at our sole discretion, at a price equal to the greater of (i) one hundred ten percent (110%) of the original purchase price, plus an amount equal to any unpaid and accrued dividends and (ii) the Fair Market Value of such number of shares of common stock which the holder of the redeemed Series B Preferred would be entitled to receive had the redeemed Series B Preferred been converted immediately prior to the redemption.

**Voting.** Holders of the Series B Preferred will have no voting rights, except as required by law.

For a detailed description of the rights, preferences and privileges of the Series B Preferred, see “Description of Securities to be Registered — the Series B Convertible Preferred Stock.”

**Q: What are the U.S. federal income tax consequences of receiving or exercising my subscription rights?**

A: A holder should not recognize income or loss for U.S. federal income tax purposes in connection with the receipt or exercise of subscription rights in the rights offering. You should consult your own tax advisor as to the particular consequences to you of the rights offering. See “Material U.S. Federal Income Tax Considerations.”

**Q: How many shares of our common stock will be outstanding after the rights offering?**

A: On [ ], 2009, the record date for the rights offering, there were [ ] shares of common stock outstanding, and completion of the rights offering will not immediately affect the number of shares of common stock outstanding. Following completion of the rights offering, (assuming all shares are purchased including through exercise of over-subscription rights), there will be 300,000 shares of Series B Preferred outstanding, which will initially be convertible into [ ] shares of common stock. Assuming conversion of all shares of Series B Preferred, (and excluding [ ] shares of common stock underlying currently outstanding options, warrants and Series A Convertible Preferred Stock), there would be [ ] shares of common stock outstanding.

**Q: If I exercise my subscription rights, when will I receive shares of Series B Preferred purchased in the rights offering?**

A: If your shares are held of record by Cede & Co. or by any other depository or nominee through the facilities of DTC on your behalf or on behalf of your broker, dealer, custodian bank, trustee or other nominee, you will have any shares that you acquire credited to the account of Cede & Co. or the other depository or nominee. With respect to all other stockholders, stock certificates for all shares acquired will be mailed promptly after payment for all the shares subscribed for has cleared.

**Q: Who is the subscription agent for the rights offering?**

A: The subscription agent is Continental Stock Transfer & Trust Company. The address for delivery to the subscription agent is as follows:

***By Mail/Commercial Courier/Hand Delivery:***

Continental Stock Transfer & Trust Company

Attn: Reorganization Department

17 Battery Place, 8th Floor

New York, NY 10004

Your delivery to an address other than the address set forth above will not constitute valid delivery and, accordingly, may be rejected by us.

**Q: What should I do if I have other questions?**

A: If you have any questions or need further information about this rights offering, please contact MacKenzie Partners, Inc., our information agent for the rights offering, at (212) 929-5500 (call collect) or (800) 322-2885 (toll-free) or via email at reedrights@mackenziepartners.com.

In addition, Source Capital Group, Inc. will act as dealer-manager for the rights offering. Under the terms and subject to the conditions contained in the dealer-manager agreement, the dealer-manager will provide marketing assistance and advice to our company in connection with this offering and will act as sole placement agent for any Series B Preferred shares that are not taken up through the exercise of the Rights. We have agreed to pay Source Capital Group, Inc. 7% of the gross proceeds of this offering in cash and warrants to purchase 5% of the shares of common stock underlying Series B Preferred sold in this offering priced at 125% of the effective initial conversion price. The warrants will not be redeemable. The warrants and the shares issuable upon exercise of the warrants will be non-transferable for a period of six months following the expiration date of the offering, except that they may be transferred in accordance with the rules of the Financial Industry Regulatory Authority, Inc., or FINRA (formerly the NASD). The warrants may be exercised in full or in part as of the date of issuance and provide for cashless exercise, customary anti-dilution rights and contain provisions for one demand registration of the sale of the underlying shares of common stock for a period of five years after the expiration date of the offering at our expense, an additional demand registration at the warrant holder's expense and piggyback registration rights for a period of five years after the expiration date of the offering at our expense. In addition, we have agreed to pay Source Capital Group, Inc. a non-accountable expense allowance of \$10,000 upon completion of this offering. We have also agreed to indemnify Source Capital Group, Inc. and their respective affiliates against certain liabilities arising under the Securities Act of 1933, as amended. Source Capital Group, Inc. is not underwriting any of the securities (including the rights) issued in this offering.

## PROSPECTUS SUMMARY

*This summary highlights only selected information contained elsewhere in this prospectus. It does not contain all of the information that is important to you before investing in our preferred stock. To understand this offering fully, you should read the entire prospectus carefully, including the risk factors and financial statements included or incorporated by reference herein.*

### **About Reed's Inc.**

We develop, manufacture, market and sell natural non-alcoholic and "New Age" beverages, candies and ice creams. "New Age Beverages" is a category that includes natural soda, fruit juices and fruit drinks, ready-to-drink teas, sports drinks and water. We currently offer 16 beverages, including diet beverages, three candies and three ice creams. We sell most of our products in specialty gourmet and natural food stores, supermarket chains, retail stores and restaurants in the United States and, to a lesser degree, in Canada.

We primarily sell our products through a network of natural, gourmet and independent distributors. We also maintain an organization of in-house sales managers who work mainly in the stores serviced by our natural, gourmet and mainstream distributors and with our distributors. We also work with regional, independent sales representatives who maintain store and distributor relationships in a specified territory. In Southern California, we have in the past maintained our own direct distribution in addition to other local distributors and are presently in the process of discontinuing our direct distribution and redirecting our customers to local distributors.

Our current business strategy is to maintain our marketing focus in the natural food marketplace while expanding sales of our products in mainstream markets and distribution channels.

We produce certain of our soda products for the western half of the United States at an 18,000 square foot warehouse facility owned by us in an unincorporated area of Los Angeles County near downtown Los Angeles, known as The Brewery.

We also contract with The Lion Brewery, Inc., a packing, or co-pack, facility in Pennsylvania, to supply us with soda products for the eastern half of the United States and nationally for soda products that we do not produce at The Brewery. Our ice creams are co-packed for us at Ronnybrooke Dairy in upstate New York on a purchase order basis. We pack our candy products at the Brewery.

We have not been profitable during our last two fiscal years and there is no assurance that we will develop profitable operations in the future. Our net loss for the years ended December 31, 2008 and 2007 was \$3,814,000 and \$5,551,000, respectively. We cannot assure you that we will have profitable operations in the future.

Our principal executive offices are at the Brewery, which is located at 13000 South Spring Street, Los Angeles, California 90061. Our telephone number is 310-217-9400. Our Internet address is [www.reedsgingerbrew.com](http://www.reedsgingerbrew.com). Information contained on our website or that is accessible through our website should not be considered to be part of this prospectus.

## The Rights Offering

### Securities Offered

We are distributing at no charge to the holders of our common stock on [ ], 2009, which we refer to as the record date, 10,000,000 subscription rights to purchase up to an aggregate of 300,000 shares of our Series B Preferred. Each share of Series B Preferred carries an eight percent (8%) annual dividend payable in kind, in common stock or in cash, in our sole discretion, for a term of three (3) years, will have an initial stated value of \$10.00 per share, and will be convertible into shares of our common stock at a conversion ratio of [ ] shares of common stock for each share of Series B Preferred held at the time of conversion, representing an initial conversion price of \$[ ] per share, which is subject to adjustment. We expect the total purchase price for the securities offered in this rights offering to be \$3,000,000 assuming full participation in the rights offering, of which no assurances can be given.

### Basic Subscription Right

We will distribute one right to the holder of record of every share of common stock that is held by the holder of record on the record date. Four (4) rights entitle the holder to purchase one share of Series B Preferred at the subscription price of \$10.00 per share, which we refer to as the basic subscription right.

### Over-Subscription Right

Holders who fully exercise their basic subscription rights will be entitled to subscribe for additional shares that may remain unsubscribed as a result of any unexercised basic subscription rights, which we refer to as the over-subscription rights. The over-subscription rights allow a holder to concurrently subscribe for an additional amount equal to up to 400% of the shares of Series B Preferred which such holder was otherwise entitled to subscribe. Oversubscription rights are exercisable at the same price per whole share as basic subscription rights. Rights may only be exercised for whole numbers of shares; no fractional shares of Series B Preferred will be issued in this offering. The percentage of remaining shares of Series B Preferred each over-subscribing rights holder may acquire will be rounded down to result in delivery of whole shares.

### Record Date

Close of business on [ ], 2009.

### Dealer-Manager

Source Capital Group, Inc.

### Commencement Date of Subscription Period

[ ], 2009.

### Expiration Date of Subscription Period

5:00 p.m., New York City time, on [ ], 2009, unless extended by us as described in this summary below under “—Extension, termination and cancellation.” Any rights not exercised at or before that time will have no value and expire without any payment to the holders of those unexercised rights.

<b>Subscription Price</b>	\$10.00 per share, payable in immediately available funds.
<b>Use of Proceeds</b>	The proceeds from the rights offering, less fees and expenses incurred in connection with the rights offering, will be used primarily for production of inventory and marketing, as well as for general working capital purposes.
<b>Transferable</b>	The rights being distributed to the holders are transferable and will be listed for trading on the NASDAQ Capital Market under the symbol “REEDR” during the course of this offering.
<b>No Recommendation</b>	Our board of directors makes no recommendation to you about whether you should exercise any rights. You are urged to consult your own financial advisors in order to make an independent investment decision about whether to exercise your rights. Please see the section of this prospectus entitled “Risk Factors” for a discussion of some of the risks involved in investing in our securities.
<b>No Minimum Subscription Requirement</b>	There is no minimum subscription requirement. We will consummate the rights offering regardless of the amount raised from the exercise of basic and over-subscription rights by the expiration date.
<b>Maximum Offering Size</b>	We will we raise no more than \$3,000,000 in this offering.
<b>No Revocation</b>	If you exercise any of your basic or over-subscription rights, you will not be permitted to revoke or change the exercise or request a refund of monies paid.
<b>U.S. Federal Income Tax Considerations</b>	A holder should not recognize income, gain, or loss for U.S. federal income tax purposes in connection with the receipt or exercise of subscription rights in the rights offering. You should consult your own tax advisor as to the particular consequences to you of the rights offering. For a detailed discussion, see “Material U.S. Federal Income Tax Considerations.”
<b>Extension, Termination and Cancellation</b>	<i>Extension.</i> If the rights offering is undersubscribed, our board of directors may extend the expiration date for exercising your subscription rights for up to an additional 30 trading days in their sole discretion. If we extend the expiration date, you will have at least ten trading days during which to exercise your rights. Any extension of this offering will be followed as promptly as practicable by an announcement, and in no event later than 9:00 a.m., New York City time, on the next business day following the previously scheduled expiration date.

*Termination; Cancellation.* We may cancel or terminate the rights offering at any time and for any reason prior to the expiration date. Any termination or cancellation of this offering will be followed as promptly as practicable by announcement thereof, and in no event later than 9:00 a.m., New York City time, on the next business day following the termination or cancellation.

**Procedure for Exercising Rights**

If you are the record holder of shares of our common stock, to exercise your rights you must complete the subscription rights certificate and deliver it to the subscription agent, Continental Stock Transfer & Trust Company, together with full payment for all the subscription rights (pursuant to both the basic subscription right and the over-subscription right) you elect to exercise. The subscription agent must receive the proper forms and payments on or before the expiration date. You may deliver the documents and payments by mail or commercial courier. If regular mail is used for this purpose, we recommend using registered mail, properly insured, with return receipt requested. If you are a beneficial owner of shares of our common stock, you should instruct your broker, dealer, custodian bank, trustee or other nominee in accordance with the procedures described in the section of this prospectus entitled “The Rights Offering—Record Date Stockholders Whose Shares are Held by a Nominee.”

**Subscription Agent**

Continental Stock Transfer & Trust Company

**Information Agent**

MacKenzie Partners, Inc.

**Questions**

If you have any questions or need further information about this rights offering, please contact MacKenzie Partners, Inc., our information agent for the rights offering, at (212) 929-5500 (call collect) or (800) 322-2885 (toll-free) or via email at [reedrights@mackenziepartners.com](mailto:reedrights@mackenziepartners.com).

**Shares Outstanding on the Record Date**

[ ] shares as of [ ], 2009 (which excludes outstanding options, warrants and preferred stock convertible into or exercisable for shares of common stock).

**Shares Outstanding after Completion of the Rights Offering**

Up to [ ] shares of our common stock will be outstanding, assuming full participation in the rights offering and full conversion of Series B Preferred Stock into common stock. These amounts exclude outstanding options, warrants and Series A Convertible Preferred Stock convertible into or exercisable for shares of common stock.

**Issuance of our Series B Preferred**

If you purchase shares pursuant to the basic or over-subscription right, we will issue certificates representing the shares of Series B Preferred to you or DTC on your behalf, as the case may be, promptly after receipt of payment for all the shares subscribed for has cleared.

**Risk Factors**

Investing in our securities involves a high degree of risk. Stockholders considering making an investment in our securities should consider the risk factors described in the section of this prospectus entitled "Risk Factors."

**Fees and Expenses**

We will bear the fees and expenses relating to the rights offering.

**Trading Symbol**

Our common stock is quoted on the NASDAQ Capital Market under the ticker symbol "REED."

**Distribution Arrangements**

Source Capital Group, Inc. will act as dealer-manager for this rights offering. Under the terms and subject to the conditions contained in the dealer-manager agreement, the dealer-manager will act as sole placement agent and provide marketing assistance in connection with this offering. We have agreed to pay Source Capital Group, Inc. certain fees for acting as dealer-manager and to reimburse the dealer-manager for its reasonable expenses incurred in connection with this offering. Source Capital Group, Inc. is not underwriting any of the rights or the shares of Series B Preferred being sold in this offering. Source Capital Group, Inc. will not be subject to any liability to us in rendering the services contemplated by the dealer-manager agreement except for any act of bad faith or gross negligence Source Capital Group, Inc.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated and deemed to be incorporated by reference herein may contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. Forward-looking statements relate to expectations, beliefs, estimates, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. In some cases, you can identify forward-looking statements by terms such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “goal,” “objective,” “potential,” “project,” “should,” “will” and “would” or the negative of these terms or other comparable terminology.

The forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, the performance of our portfolio and our business, financial condition, liquidity and results of operations may vary materially from those expressed, anticipated or contemplated in our forward-looking statements. You should carefully consider these risks before you invest in our securities, along with the following factors that could cause actual results to vary from our forward-looking statements:

- Our ability to generate sufficient cash flow to support capital expansion plans and general operating activities,
- Decreased demand for our products resulting from changes in consumer preferences,
- Competitive products and pricing pressures and our ability to gain or maintain our share of sales in the marketplace,
- The introduction of new products,
- Our being subject to a broad range of evolving federal, state and local laws and regulations including those regarding the labeling and safety of food products, establishing ingredient designations and standards of identity for certain foods, environmental protections, as well as worker health and safety. Changes in these laws and regulations could have a material effect on the way in which we produce and market our products and could result in increased costs,
- Changes in the cost and availability of raw materials and the ability to maintain our supply arrangements and relationships and procure timely and/or adequate production of all or any of our products,
- Our ability to penetrate new markets and maintain or expand existing markets,
- Maintaining existing relationships and expanding the distributor network of our products,
- The marketing efforts of distributors of our products, most of whom also distribute products that are competitive with our products,

- Decisions by distributors, grocery chains, specialty chain stores, club stores and other customers to discontinue carrying all or any of our products that they are carrying at any time,
- The availability and cost of capital to finance our working capital needs and growth plans,
- The effectiveness of our advertising, marketing and promotional programs,
- Changes in product category consumption,
- Economic and political changes,
- Consumer acceptance of new products, including taste test comparisons,
- Possible recalls of our products, and
- Our ability to make suitable arrangements for the co-packing of any of our products.

Except as required by law, we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise. In light of these risks, uncertainties and assumptions, the events described by our forward-looking statements might not occur. We qualify any and all of our forward-looking statements by these cautionary factors. Please keep this cautionary note in mind as you read this prospectus and the documents incorporated and deemed to be incorporated by reference herein.

## RISK FACTORS

*An investment in our securities is very risky. Our financial condition is unsound. You should not invest in our securities unless you can afford to lose your entire investment. You should carefully consider the risk factors described below, together with all other information in this prospectus, before making an investment decision.*

### **Risks Related to the Rights Offering**

***Your interest in our company may be diluted as a result of this offering.***

Common stockholders who do not fully exercise their respective rights should expect that they will, at the completion of this offering, own a smaller proportional interest in our company than would otherwise be the case had they fully exercised their basic subscription rights.

***Completion of this offering is not subject to us raising a minimum offering amount and therefore proceeds may be insufficient to meet our objectives, thereby increasing the risk to investors in this offering.***

Completion of this offering is not subject to us raising a minimum offering amount. As such, proceeds from this rights offering may not be sufficient to meet the objectives we state in this prospectus, other corporate milestones that we may set, or to avoid a “going concern” modification in future reports of our auditors as to uncertainty with respect to our ability to continue as a going concern. Investors should not rely on the success of this offering to address our need for funding. If we fail to raise capital by the end of 2009, we would expect to have to significantly decrease operating expenses, which will curtail the growth of our business.

***You may not revoke your subscription rights exercise and could be committed to buying shares of preferred stock above the prevailing market value of our common stock into which the Series B Preferred Stock is convertible.***

Once you exercise your subscription rights, you may not revoke the exercise and cancel the purchase of the shares in the rights offering. The public trading market price of our common stock is currently below the price at which shares of Series B Preferred are convertible into shares of our common stock as of the date of this prospectus, and could further decline before the subscription rights expire. If you exercise your subscription rights and, the public trading market price of our common stock does not increase, you will have committed to buying shares of our Series B Preferred at a price above the prevailing market value of our common stock into which the Series B Preferred is convertible.

***There is no active trading market for Series B Preferred and an active trading market is unlikely to develop. Conversion into the underlying shares of our common stock and sale of those shares may be the only way for you to liquidate your investment in any shares of Series B Preferred***

We do not intend to apply to list the Series B Preferred for trading on the NASDAQ Capital Market. We intend to apply to the OTC Bulletin Board for quotation of our Series B Preferred. We cannot assure you that our Series B Preferred will meet the requirements for quotation or that there will be an active trading market for our Series B Preferred. There is currently no market for the Series B Preferred and an active trading market is unlikely to develop. Conversion into the underlying shares of our common stock and sale of those shares may be the only way for you to liquidate your investment in any shares of Series B Preferred. The conversion price of our Series B Preferred is currently above the market price of our common stock.

***None of our officers, directors or significant stockholders are obligated to exercise their subscription right and, as a result, the offering may be undersubscribed.***

Christopher J. Reed, our President, Chief Executive Officer and Chairman of the Board beneficially owns approximately 35% of our common stock. As a group, our officers and directors beneficially own approximately 35% of our common stock. None of our officers, directors or significant stockholders are obligated to participate in this offering. We cannot guarantee you that any of our officers or directors will exercise their basic or over-subscription rights to purchase any shares issued in connection with this offering. As a result, the offering may be undersubscribed and proceeds may not be sufficient to meet the objectives we state in this prospectus or other corporate milestones that we may set, or to avoid a “going concern” modification in future reports of our auditors as to uncertainty with respect to our ability to continue as a going concern.

***If we terminate this offering for any reason, we will have no obligation other than to return subscription monies promptly.***

We may decide, in our discretion and for any reason, to cancel or terminate the rights offering at any time prior to the expiration date. If this offering is terminated, we will have no obligation with respect to rights that have been exercised except to return promptly, without interest or deduction, the subscription monies deposited with the subscription agent. If we terminate this offering and you have not exercised any rights, such rights will expire worthless.

***The Series B Preferred is equity and is subordinate to our existing class of Series A Convertible Preferred Stock as well as existing and future indebtedness.***

The shares of Series B Preferred are equity interests in Reed’s and do not constitute indebtedness. As such, the shares of Series B Preferred will rank junior to all indebtedness and other non-equity claims on Reed’s with respect to assets available to satisfy claims on Reed’s, including in a liquidation of Reed’s. In addition, the Series B Preferred ranks junior for the purposes of dividends and distributions upon liquidation to our existing class of Series A Convertible Preferred Stock. Further, our board of directors has the ability to issue additional shares of preferred stock and any future designated series of preferred stock may be senior to the Series B Preferred for purposes of dividends and distributions upon liquidation and we would be required to satisfy those senior liquidation preferences before we would be permitted to make distributions to holders of our Series B Preferred.

***Our ability to pay dividends is dependent on a number of factors, including satisfying state law requirements, and we cannot guarantee that we will be in a position to pay dividends in the future as currently expected.***

Unlike indebtedness, where principal and interest would customarily be payable on specified due dates, in the case of preferred stock like the Series B Preferred stock (1) dividends are payable only if, as and when declared by our board of directors and (2) as a corporation, we are subject to restrictions on payments of dividends out of lawfully available funds. Further, even if we are able to pay dividends on our Series B Preferred (which are junior to our Series A Convertible Preferred Stock and senior to our common stock for purposes of dividends and distributions), we may be limited, or prohibited, from paying dividends on our common stock.

***The price of our common stock may fluctuate significantly, and this may make it difficult for you to resell the Series B Preferred or common stock issuable upon conversion of the Series B Preferred when you want or at prices you find attractive.***

The trading price of our common stock may fluctuate substantially. The price of the common stock that will prevail in the market after this offering may be higher or lower than the subscription price depending on many factors, some of which are beyond our control and may not be directly related to our operating performance. These factors include, but are not limited to, the following:

- price and volume fluctuations in the overall stock market from time to time, including increased volatility due to the worldwide credit and financial markets crisis;
- significant volatility in the market price and trading volume of our securities, including increased volatility due to the worldwide credit and financial markets crisis;
- actual or anticipated changes or fluctuations in our operating results;
- material announcements by us regarding business performance, financings, mergers and acquisitions or other transactions;
- general economic conditions and trends;
- competitive factors;
- loss of key supplier or distribution relationships; or
- departures of key personnel.

***Before converting any Series B Preferred into our common stock, you are not entitled to any rights with respect to our common stock, but you will be subject to all changes affecting our common stock.***

Before converting any Series B Preferred into our common stock, you are not entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock). You will only be entitled to rights on the common stock if and when we deliver shares of common stock to you upon conversion of your Series B Preferred. For example, in the event that an amendment is proposed to our articles of incorporation or bylaws requiring shareholder approval and the record date for determining the shareholders of record entitled to vote on the amendment occurs prior to your becoming a record holder of the shares of common stock issuable upon conversion, you will not be entitled to vote such shares in respect of such amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock made if such amendment is approved.

***The conversion rate of the Series B Preferred may not be adjusted for all dilutive events that may adversely affect the common stock issuable upon conversion of the Series B Preferred.***

The conversion rate of the Series B Preferred is subject to adjustment upon certain events, including the issuance of dividends or distributions in common stock and subdivisions and combinations of our common stock as described under “Description of Securities to Be Registered — Series B Convertible Preferred Stock—Anti-Dilution Rate Adjustments.” We will not adjust the conversion rate for other events, including offerings of common stock for cash by us or in connection with acquisitions. There can be no assurance that an event that adversely affects the value of the Series B Preferred, but does not result in an adjustment to the conversion rate, will not occur.

***There may be future sales or other dilution of our equity, which may adversely affect the market price of our common stock.***

We are not restricted from issuing additional common stock or preferred stock, including any securities that are convertible into or exchangeable for, or that represent the right to receive, common stock or any substantially similar securities. The market price of our common stock could decline as a result of sales of shares of common stock or similar securities in the market made after this offering or the perception that such sales could occur.

***The conversion of some or all of the Series B Preferred will dilute the ownership interest of our existing common stockholders, and any sales in the public of our common stock issuable upon such conversion may adversely affect prevailing market prices of the outstanding shares of our common stock..***

Each share of Series B Preferred will be convertible at the option of the holder into [ ] shares of our common stock, subject to anti-dilution adjustments. The conversion of some or all of the Series B Preferred will dilute the ownership interest of our existing common stockholders. Any sales in the public market of our common stock issuable upon such conversion could adversely affect prevailing market prices of the outstanding shares of our common stock.

***The subscription price determined for this offering is not an indication of the value of our Series B Preferred.***

Our Series B Preferred has a stated value equal to the subscription price of \$10.00. Each share of Series B Preferred will be convertible into shares of our common stock at a conversion ratio of [ ] shares of common stock for each share of Series B Preferred held at the time of conversion, representing an initial conversion price of \$[ ] per share, which is subject to adjustment. The conversion rate for the shares of Series B Preferred in this offering was set by our board of directors. The conversion price approximates a slight premium to the current trading value of our common stock as of the date of this prospectus. The subscription price does not necessarily bear any relationship to the book value of our assets, results of operations, cash flows, losses, financial condition or any other established criteria for value. You should not consider the subscription price as an indication of the value of the Series B Preferred. As of the date of this prospectus, our common stock traded below the conversion price.

***We will have broad discretion in the use of the net proceeds from this offering and may not use the proceeds effectively.***

Although we plan to use the proceeds of this offering primarily for production of inventory, marketing and working capital, we will not be restricted to such use and will have broad discretion in determining how the proceeds of this offering will be used. Our discretion is not substantially limited by the uses set forth in this prospectus in the section entitled "Use of Proceeds." While our board of directors believes the flexibility in application of the net proceeds is prudent, the broad discretion it affords entails increased risks to the investors in this offering. Investors in this offering have no current basis to evaluate the possible merits or risks of any application of the net proceeds of this offering. Our stockholders may not agree with the manner in which we choose to allocate and spend the net proceeds.

***If you do not act on a timely basis and follow subscription instructions, your exercise of rights may be rejected.***

Holders of shares of common stock who desire to purchase shares of our Series B Preferred in this offering must act on a timely basis to ensure that all required forms and payments are actually received by the subscription agent prior to 5:00 p.m., New York City time, on the expiration date, unless extended. If you are a beneficial owner of shares of common stock and you wish to exercise your rights, you must act promptly to ensure that your broker, dealer, custodian bank, trustee or other nominee acts for you and that all required forms and payments are actually received by your broker, dealer, custodian bank, trustee or other nominee in sufficient time to deliver such forms and payments to the subscription agent to exercise the rights granted in this offering that you beneficially own prior to 5:00 p.m., New York City time on the expiration date, as may be extended. We will not be responsible if your broker, dealer, custodian bank, trustee or other nominee fails to ensure that all required forms and payments are actually received by the subscription agent prior to 5:00 p.m., New York City time, on the expiration date, as may be extended.

If you fail to complete and sign the required subscription forms, send an incorrect payment amount, or otherwise fail to follow the subscription procedures that apply to your exercise in this offering, the subscription agent may, depending on the circumstances, reject your subscription or accept it only to the extent of the payment received. Neither we nor the subscription agent undertakes to contact you concerning an incomplete or incorrect subscription form or payment, nor are we under any obligation to correct such forms or payment. We have the sole discretion to determine whether a subscription exercise properly follows the subscription procedures.

***We cannot guarantee that you will receive all of the amount of shares for which you subscribe under your basic subscription rights.***

Basic subscription rights may be oversubscribed and will be allocated *pro rata* among rights holders, based on the number of basic subscription shares to which they subscribed. We cannot guarantee that you will receive all of the amount of shares for which you subscribed. If the pro rated amount of shares allocated to you in connection with your basic subscription right is less than your basic subscription request, then the excess funds held by the subscription agent on your behalf will be returned to you promptly without interest or deduction and we will have no further obligations to you.

***We cannot guarantee that you will receive any or all of the amount of shares for which you over-subscribed.***

Holders who fully exercise their basic subscription rights will be entitled to subscribe for an additional amount of shares equal to up to 400% of the shares for which such holder was otherwise entitled to subscribe. Over-subscription rights will be allocated *pro rata* among rights holders who over-subscribed, based on the number of over-subscription shares to which they subscribed. We cannot guarantee that you will receive any or all of the amount of shares for which you over-subscribed. If the pro rated amount of shares allocated to you in connection with your over-subscription right is less than your over-subscription request, then the excess funds held by the subscription agent on your behalf will be returned to you promptly without interest or deduction and we will have no further obligations to you.

***If you make payment of the subscription price by uncertified check, your check may not clear in sufficient time to enable you to purchase shares in this rights offering.***

Any uncertified check used to pay for shares to be issued in this rights offering must clear prior to the expiration date of this rights offering, and the clearing process may require five or more business days. If you choose to exercise your subscription rights, in whole or in part, and to pay for shares by uncertified check and your check has not cleared prior to the expiration date of this rights offering, you will not have satisfied the conditions to exercise your subscription rights and will not receive the shares you wish to purchase.

***The receipt of rights may be treated as a taxable distribution to you.***

The distribution of the rights in this offering should be a non-taxable distribution under Section 305(a) of the Internal Revenue Code of 1986, as amended (the "Code"). Please see the discussion on the "Material U.S. Federal Income Tax Considerations" below. This position is not binding on the IRS, or the courts, however. If this offering is part of a "disproportionate distribution" under Section 305 of the Code, your receipt of rights in this offering may be treated as the receipt of a taxable distribution to you equal to the fair market value of the rights. Any such distribution would be treated as dividend income to the extent of our current and accumulated earnings and profits, if any, with any excess being treated as a return of capital to the extent thereof and then as capital gain. Each holder of common stock is urged to consult his, her or its own tax advisor with respect to the particular tax consequences of this offering.

***The dealer-manager is not underwriting the rights or the securities underlying the rights.***

Source Capital Group, Inc., as the dealer-manager of this rights offering, is not an underwriter of the rights or the shares of Series B Preferred issuable upon exercise of the basic subscription or over-subscription rights. Its services to us in this connection cannot be construed as any assurance that this offering will be successful.

### **Risks Relating to Our Business**

***We have a history of operating losses. If we continue to incur operating losses, we eventually may have insufficient working capital to maintain or expand operations according to our business plan.***

As of March 31, 2009, we had an accumulated deficit of \$15,417,000 and had incurred losses from operations of \$415,000 during the three months ended March 31, 2009. For the years ended December 31, 2008 and 2007, we incurred losses from operations of \$3,571,000 and \$5,489,000, respectively.

As of March 31, 2009, we had outstanding borrowings of \$1,274,000 under our secured line of credit agreement with First Capital Western Region LLC.

On June 16, 2009, we closed on a sale and leaseback transaction with regards to our real property, plant and equipment located at 12930 South Spring Street and 13000 South Spring Street, Los Angeles, California 90061. In connection with this transaction, we paid off the first trust deed secured by the property in the amount of \$1,756,000. Additionally, we amended our secured line of credit agreement with First Capital Western Region LLC. The credit facility was reduced to \$2 million and reserves against available collateral were increased by \$350,000. Proceeds from the sale and leaseback transaction were applied to reduce the outstanding loan under the credit facility by \$1,264,000.

We recognize that operating losses negatively impact liquidity and we are working on decreasing operating losses, while focusing on increasing net sales. We believe the operations of the Company are running at approximately breakeven, after adjusting for non-cash expenses. Our current cash position and lines of credit will enable us to meet our cash needs through at least December 2009.

We may not generate sufficient revenues from product sales in the future to achieve profitable operations. If we are not able to achieve profitable operations at some point in the future, we eventually may have insufficient working capital to maintain our operations as we presently intend to conduct them or to fund our expansion and marketing and product development plans. In addition, our losses may increase in the future as we expand our manufacturing capabilities and fund our marketing plans and product development. These losses, among other things, have had and will continue to have an adverse effect on our working capital, total assets and stockholders' equity. If we are unable to achieve profitability, the market value of our common stock will decline and there would be a material adverse effect on our financial condition.

If we continue to suffer losses from operations, the proceeds from our public offering and private placement may be insufficient to support our ability to expand our business operations as rapidly as we would deem necessary at any time, unless we are able to obtain additional financing. There can be no assurance that we will be able to obtain such financing on acceptable terms, or at all. If adequate funds are not available or are not available on acceptable terms, we may not be able to pursue our business objectives and would be required to reduce our level of operations, including reducing infrastructure, promotions, personnel and other operating expenses. These events could adversely affect our business, results of operations and financial condition.

In addition, some or all of the elements of our expansion plan may have to be curtailed or delayed unless we are able to find alternative external sources of working capital. We would need to raise additional funds to respond to business contingencies, which may include the need to:

- fund more rapid expansion,
- fund additional marketing expenditures,
- enhance our operating infrastructure,
- respond to competitive pressures, and
- acquire other businesses or engage in other strategic initiatives.

If we need to raise additional financing to support our operations, we cannot assure you that additional financing will be available on terms favorable to us, or at all. If adequate funds are not available or if they are not available on acceptable terms, our ability to fund the growth of our operations, take advantage of opportunities, develop products or services or otherwise respond to competitive pressures, could be significantly limited.

***We may not be able to develop successful new beverage products which are important to our growth.***

An important part of our strategy is to increase our sales through the development of new beverage products. We cannot assure you that we will be able to continue to develop, market and distribute future beverage products that will enjoy market acceptance. The failure to continue to develop new beverage products that gain market acceptance could have an adverse impact on our growth and materially adversely affect our financial condition. We may have higher obsolescent product expense if new products fail to perform as expected due to the need to write off excess inventory of the new products.

Our results of operations may be impacted in various ways by the introduction of new products, even if they are successful, including the following:

- Sales of new products could adversely impact sales of existing products,
- We may incur higher cost of goods sold and selling, general and administrative expenses in the periods when we introduce new products due to increased costs associated with the introduction and marketing of new products, most of which are expensed as incurred, and
- When we introduce new platforms and bottle sizes, we may experience increased freight and logistics costs as our co-packers adjust their facilities for the new products.

***The beverage business is highly competitive.***

The premium beverage and carbonated soft drink industries are highly competitive. Many of our competitors have substantially greater financial, marketing, personnel and other resources than we do. Competitors in the soft drink industry include bottlers and distributors of nationally advertised and marketed products, as well as chain store and private label soft drinks. The principal methods of competition include brand recognition, price and price promotion, retail space management, service to the retail trade, new product introductions, packaging changes, distribution methods, and advertising. We also compete for distributors, shelf space and customers primarily with other premium beverage companies. As additional competitors enter the field, our market share may fail to increase or may decrease.

***The growth of our revenues is dependent on acceptance of our products by mainstream consumers.***

We have dedicated significant resources to introduce our products to the mainstream consumer. As such, we have increased our sales force and executed agreements with distributors who, in turn, distribute to mainstream consumers at grocery stores, club stores and other retailers. If our products are not accepted by the mainstream consumer, our business could suffer.

***Our failure to accurately estimate demand for our products could adversely affect our business and financial results.***

We may not correctly estimate demand for our products. Our ability to estimate demand for our products is imprecise, particularly with new products, and may be less precise during periods of rapid growth, particularly in new markets. If we materially underestimate demand for our products or are unable to secure sufficient ingredients or raw materials including, but not limited to, glass, labels, flavors or packing arrangements, we might not be able to satisfy demand on a short-term basis. Moreover, industry-wide shortages of certain juice concentrates and sweeteners have been and could, from time to time in the future, be experienced, which could interfere with and/or delay production of certain of our products and could have a material adverse effect on our business and financial results. We do not use hedging agreements or alternative instruments to manage this risk.

***The loss of our largest customers would substantially reduce revenues.***

Our customers are material to our success. If we are unable to maintain good relationships with our existing customers, our business could suffer. Unilateral decisions could be taken by our distributors, and/or convenience chains, grocery chains, specialty chain stores, club stores and other customers to discontinue carrying all or any of our products that they are carrying at any time, which could cause our business to suffer.

A natural foods distributor, accounted for approximately 32% of our sales for the year ended December 31, 2008 and 35% of our sales in 2007. One customer accounted for approximately 14% of our sales for the years ended December 31, 2008 and 2007. As a result of this customer concentration, the loss of this distributor or this major customer as a retailer would substantially reduce our revenues unless and until we replaced that source of revenue.

***The loss of our third-party distributors could impair our operations and substantially reduce our financial results.***

We depend in large part on distributors to distribute our beverages and other products. Most of our outside distributors are not bound by written agreements with us and may discontinue their relationship with us on short notice. Most distributors handle a number of competitive products. In addition, our products are a small part of our distributors' businesses.

We continually seek to expand distribution of our products by entering into distribution arrangements with regional bottlers or other direct store delivery distributors having established sales, marketing and distribution organizations. Many of our distributors are affiliated with and manufacture and/or distribute other soda and non-carbonated brands and other beverage products. In many cases, such products compete directly with our products.

The marketing efforts of our distributors are important for our success. If our brands prove to be less attractive to our existing distributors and/or if we fail to attract additional distributors, and/or our distributors do not market and promote our products above the products of our competitors, our business, financial condition and results of operations could be adversely affected.

One distributor accounted for approximately 32% of our sales for the year ended December 31, 2008 and 35% of our sales in 2007. The loss of this distributor may adversely affect sales in the short term and alternative distribution channels may not be found in a timely manner. The loss of our third-party beverage distributors could impair our operations and adversely affect our financial performance.

***Price fluctuations in, and unavailability of, raw materials and packaging that we use could adversely affect us.***

We do not enter into hedging arrangements for raw materials. Although the prices of raw materials that we use have not increased significantly in recent years, our results of operations would be adversely affected if the price of these raw materials were to rise and we were unable to pass these costs on to our customers.

We depend upon an uninterrupted supply of the ingredients for our products, a significant portion of which we obtain overseas, principally from China and Brazil. We obtain almost all of our crystallized ginger from Fiji and our Ginger Chews from Indonesia. Any decrease in the supply of these ingredients or increase in the prices of these ingredients as a result of any adverse weather conditions, pests, crop disease, interruptions of shipment or political considerations, among other reasons, could substantially increase our costs and adversely affect our financial performance.

We also depend upon an uninterrupted supply of packaging materials, such as glass for our bottles and kegs for our 5 liter party kegs. We obtain our bottles domestically and our kegs from Europe. Any decrease in supply of these materials or increase in the prices of the materials, as a result of decreased supply or increased demand, could substantially increase our costs and adversely affect our financial performance.

***The loss of any of our co-packers could impair our operations and substantially reduce our financial results.***

We rely on third parties, called co-packers in our industry, to produce some of our beverages, to produce our glass bottles and to bottle some of our beverages. Our co-packing agreement with our principal co-packer expires on November 1, 2011 and grants Reed's the option to extend the contract for an additional one year period. Our co-packing arrangements with other companies are on a short term basis and such co-packers may discontinue their relationship with us on short notice. Our co-packing arrangements expose us to various risks, including:

- Our largest co-packer, Lion Brewery, accounted for approximately 75% of our total case production for the year ended December 31, 2008 and 82% and 72% of our total case production in 2007 and 2006, respectively.
- if any of those co-packers were to terminate our co-packing arrangement or have difficulties in producing beverages for us, our ability to produce our beverages would be adversely affected until we were able to make alternative arrangements, and
- Our business reputation would be adversely affected if any of the co-packers were to produce inferior quality products.

***We compete in an industry that is brand-conscious, so brand name recognition and acceptance of our products are critical to our success.***

Our business is substantially dependent upon awareness and market acceptance of our products and brands by our targeted consumers. In addition, our business depends on acceptance by our independent distributors of our brands as beverage brands that have the potential to provide incremental sales growth rather than reduce distributors' existing beverage sales. Although we believe that we have been relatively successful towards establishing our brands as recognizable brands in the New Age beverage industry, it may be too early in the product life cycle of these brands to determine whether our products and brands will achieve and maintain satisfactory levels of acceptance by independent distributors and retail consumers. We believe that the success of our product name brands will also be substantially dependent upon acceptance of our product name brands. Accordingly, any failure of our brands to maintain or increase acceptance or market penetration would likely have a material adverse affect on our revenues and financial results.

***We compete in an industry characterized by rapid changes in consumer preferences and public perception, so our ability to continue to market our existing products and develop new products to satisfy our consumers' changing preferences will determine our long-term success.***

Consumers are seeking greater variety in their beverages. Our future success will depend, in part, upon our continued ability to develop and introduce different and innovative beverages. In order to retain and expand our market share, we must continue to develop and introduce different and innovative beverages and be competitive in the areas of quality and health, although there can be no assurance of our ability to do so. There is no assurance that consumers will continue to purchase our products in the future. Additionally, many of our products are considered premium products and to maintain market share during recessionary periods, we may have to reduce profit margins, which would adversely affect our results of operations. In addition, there is increasing awareness and concern for the health consequences of obesity. This may reduce demand for our non-diet beverages, which could affect our profitability. Product lifecycles for some beverage brands and/or products and/or packages may be limited to a few years before consumers' preferences change. The beverages we currently market are in varying stages of their lifecycles and there can be no assurance that such beverages will become or remain profitable for us. The beverage industry is subject to changing consumer preferences and shifts in consumer preferences may adversely affect us if we misjudge such preferences. We may be unable to achieve volume growth through product and packaging initiatives. We also may be unable to penetrate new markets. If our revenues decline, our business, financial condition and results of operations will be materially and adversely affected.

***Our quarterly operating results may fluctuate significantly because of the seasonality of our business.***

Our highest revenues occur during the spring and summer, the second and third quarters of each fiscal year. These seasonality issues may cause our financial performance to fluctuate. In addition, beverage sales can be adversely affected by sustained periods of bad weather.

***Our business is subject to many regulations and noncompliance is costly.***

The production, marketing and sale of our unique beverages, including contents, labels, caps and containers, are subject to the rules and regulations of various federal, provincial, state and local health agencies. If a regulatory authority finds that a current or future product or production run is not in compliance with any of these regulations, we may be fined, or production may be stopped, thus adversely affecting our financial conditions and operations. Similarly, any adverse publicity associated with any noncompliance may damage our reputation and our ability to successfully market our products. Furthermore, the rules and regulations are subject to change from time to time and while we closely monitor developments in this area, we have no way of anticipating whether changes in these rules and regulations will impact our business adversely. Additional or revised regulatory requirements, whether labeling, environmental, tax or otherwise, could have a material adverse effect on our financial condition and results of operations.

***Rising fuel and freight costs may have an adverse impact on our sales and earnings.***

The recent volatility in the global oil markets has resulted in rising fuel and freight prices, which many shipping companies are passing on to their customers. Our shipping costs, and particularly our fuel expenses, have been increasing and we expect these costs may continue to increase. Due to the price sensitivity of our products, we do not anticipate that we will be able to pass all of these increased costs on to our customers. The increase in fuel and freight costs could have a material adverse impact on our financial condition.

***Our manufacturing process is not patented.***

None of the manufacturing processes used in producing our products are subject to a patent or similar intellectual property protection. Our only protection against a third party using our recipes and processes is confidentiality agreements with the companies that produce our beverages and with our employees who have knowledge of such processes. If our competitors develop substantially equivalent proprietary information or otherwise obtain access to our knowledge, we will have greater difficulty in competing with them for business, and our market share could decline.

***We face risks associated with product liability claims and product recalls.***

Other companies in the beverage industry have experienced product liability litigation and product recalls arising primarily from defectively manufactured products or packaging. We maintain product liability insurance insuring our operations from any claims associated with product liability and we believe that the amount of this insurance is sufficient to protect us. We do not maintain product recall insurance. In the event we were to experience additional product liability or product recall claim, our business operations and financial condition could be materially and adversely affected.

***Our intellectual property rights are critical to our success, the loss of such rights could materially, adversely affect our business.***

We regard the protection of our trademarks, trade dress and trade secrets as critical to our future success. We have registered our trademarks in the United States that are very important to our business. We also own the copyright in and to portions of the content on the packaging of our products. We regard our trademarks, copyrights and similar intellectual property as critical to our success and attempt to protect such property with registered and common law trademarks and copyrights, restrictions on disclosure and other actions to prevent infringement. Product packages, mechanical designs and artwork are important to our success and we would take action to protect against imitation of our packaging and trade dress and to protect our trademarks and copyrights, as necessary. We also rely on a combination of laws and contractual restrictions, such as confidentiality agreements, to establish and protect our proprietary rights, trade dress and trade secrets. However, laws and contractual restrictions may not be sufficient to protect the exclusivity of our intellectual property rights, trade dress or trade secrets. Furthermore, enforcing our rights to our intellectual property could involve the expenditure of significant management and financial resources. There can be no assurance that other third parties will not infringe or misappropriate our trademarks and similar proprietary rights. If we lose some or all of our intellectual property rights, our business may be materially and adversely affected.

***If we are not able to retain the full time services of our management team, including Christopher J. Reed, it will be more difficult for us to manage our operations and our operating performance could suffer.***

Our business is dependent, to a large extent, upon the services of our management team, including Christopher J. Reed, our founder, President, Chief Executive Officer and Chairman of the Board. We depend on our management team, but especially on Mr. Reed's creativity and leadership in running or supervising virtually all aspects of our day-to-day operations. We do not have a written employment agreement with any member of our management team or Mr. Reed. In addition, we do not maintain key person life insurance on any of our management team or Mr. Reed. Therefore, in the event of the loss or unavailability of any member of the management team to us, there can be no assurance that we would be able to locate in a timely manner or employ qualified personnel to replace him. The loss of the services of any member of our management team or our failure to attract and retain other key personnel over time would jeopardize our ability to execute our business plan and could have a material adverse effect on our business, results of operations and financial condition.

***We need to manage our growth and implement and maintain procedures and controls during a time of rapid expansion in our business.***

The cost of manufacturing and packaging our products was approximately 78% and 85% of our aggregate revenues in 2008 and 2007, respectively. This gross margin places pressure upon our cash flow and cash reserves when our sales increase. If we are to expand our operations, such expansion would place a significant strain on our management, operational and financial resources. Such expansion would also require improvements in our operational, accounting and information systems, procedures and controls. If we fail to manage this anticipated expansion properly, it could divert our limited management, cash, personnel, and other resources from other responsibilities and could adversely affect our financial performance.

***Our business may be negatively impacted by a slowing economy or by unfavorable economic conditions or developments in the United States and/or in other countries in which we operate.***

A general slowdown in the economy in the United States or unfavorable economic conditions or other developments may result in decreased consumer demand, business disruption, supply constraints, foreign currency devaluation, inflation or deflation. A slowdown in the economy or unstable economic conditions in the United States or in the countries in which we operate could have an adverse impact on our business results or financial condition. Our foreign sales (except for Canada) accounted for less than 1.0% of our sales for the years ended December 31, 2008 and 2007, respectively.

***We have operated without independent directors in the past.***

We have not had two independent directors through a large portion of our history. As a result, certain material agreements between related parties have not been negotiated with the oversight of independent directors and were entered into at the absolute discretion of the majority stockholder, Christopher J. Reed.

### **Risks Relating to Our Securities**

***We recently conducted a rescission offer for shares issued in our initial public offering. Although we have completed the rescission offer, we may continue to be subject to claims related to the circumstances related to the rescission offer.***

From August 3, 2005 through April 7, 2006, we issued 333,156 shares of our common stock in connection with our initial public offering. The shares issued in connection with the initial public offering may have been issued in violation of either federal or state securities laws, or both, and may be subject to rescission. In order to address this issue, we made a rescission offer to the holders of these shares.

Our rescission covered an aggregate of 333,156 shares of common stock issued in connection with our initial public offering. These securities represented all of the shares issued in connection with the initial public offering prior to October 11, 2006. We offered to rescind the shares of our common stock that were subject to the rescission offer for an amount equal to the price paid for the shares plus interest, calculated from the date of the purchase through the date on which the rescission offer expires, at the applicable statutory interest rate per year. If our rescission offer had been accepted by all offerees, we would have been required to make an aggregate payment to the holders of these shares of up to approximately \$1,332,624, plus statutory interest.

On August 12, 2006, we made a rescission offer to all holders of the outstanding shares that we believe are subject to rescission, pursuant to which we offered to repurchase these shares then outstanding from the holders. At the expiration of our rescission offer on September 18, 2006, the rescission offer was accepted by 32 of the offerees to the extent of 28,420 shares for an aggregate of \$118,711.57, including statutory interest. The shares that were tendered for rescission were agreed to be purchased by others and not from our funds.

Federal securities laws do not provide that a rescission offer will terminate a purchaser's right to rescind a sale of stock that was not registered as required or was not otherwise exempt from such registration requirements. Accordingly, although the rescission offer may have been accepted or rejected by some of the offerees, we may continue to be liable under federal and state securities laws for up to an amount equal to the value of all shares of common stock issued in connection with the initial public offering, plus any statutory interest we may be required to pay. If it is determined that we offered securities without properly registering them under federal or state law, or securing an exemption from registration, regulators could impose monetary fines or other sanctions as provided under these laws.

***There has been a very limited public trading market for our securities and the market for our securities, may continue to be limited, and be sporadic and highly volatile.***

There is currently a limited public market for our common stock. Our common stock was previously listed for trading on the OTC Bulletin Board (the "OTCBB") from January 3, 2007 to November 26, 2007. Since November 27, 2007, our common stock has been listed for trading on the NASDAQ Capital Market. We cannot assure you that an active market for our shares will be established or maintained in the future. Holders of our common stock may, therefore, have difficulty selling their shares, should they decide to do so. In addition, there can be no assurances that such markets will continue or that any shares, which may be purchased, may be sold without incurring a loss. Any such market price of our shares may not necessarily bear any relationship to our book value, assets, past operating results, financial condition or any other established criteria of value, and may not be indicative of the market price for the shares in the future.

In addition, the market price of our common stock may be volatile, which could cause the value of our common stock to decline. Securities markets experience significant price and volume fluctuations. This market volatility, as well as general economic conditions, could cause the market price of our common stock to fluctuate substantially. Many factors that are beyond our control may significantly affect the market price of our shares. These factors include:

- price and volume fluctuations in the stock markets,
- changes in our revenues and earnings or other variations in operating results,
- any shortfall in revenue or increase in losses from levels expected by us or securities analysts,
- changes in regulatory policies or law,
- operating performance of companies comparable to us, and
- general economic trends and other external factors.

Even if an active market for our common stock is established, stockholders may have to sell their shares at prices substantially lower than the price they paid for it or might otherwise receive than if a broad public market existed.

***Future financings could adversely affect common stock ownership interest and rights in comparison with those of other security holders.***

Our board of directors has the power to issue additional shares of common or preferred stock without stockholder approval. If additional funds are raised through the issuance of equity or convertible debt securities, the percentage ownership of our existing stockholders will be reduced, and these newly issued securities may have rights, preferences or privileges senior to those of existing stockholders.

If we issue any additional common stock or securities convertible into common stock, such issuance will reduce the proportionate ownership and voting power of each other stockholder. In addition, such stock issuances might result in a reduction of the book value of our common stock.

***Because Christopher J. Reed controls a large portion of our stock, he can control the outcome, or greatly influence the outcome, of all matters on which stockholders vote.***

Christopher J. Reed, our President, Chief Executive Officer, acting Chief Financial Officer, and Chairman of the Board owns approximately 35% of our common stock. Therefore, Mr. Reed will be able to control the outcome, or greatly influence the outcome, on all matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation, and any merger, consolidation or sale of all or substantially all of our assets or other transactions resulting in a change of control of our company. In addition, as our Chairman and Chief Executive Officer, Mr. Reed has and will continue to have significant influence over our strategy, technology and other matters. Mr. Reed's interests may not always coincide with the interests of other holders of our common stock.

***A substantial number of our shares are available for sale in the public market and sales of those shares could adversely affect our stock price.***

Sales of a substantial number of shares of common stock into the public market, or the perception that such sales could occur, could substantially reduce our stock price in the public market for our common stock, and could impair our ability to obtain capital through a subsequent financing of our securities. We have 9,107,177 shares of common stock outstanding as of March 31, 2009. Of the shares of our common stock currently outstanding, 4,810,882 shares are "restricted securities" under the Securities Act. Some of these "restricted securities" will be subject to restrictions on the timing, manner, and volume of sales of such shares.

In addition, as of March 31, 2009, we had issued and outstanding options and warrants that may be exercised into 2,660,736 shares of common stock and 47,121 shares of Series A preferred stock that may be converted into 188,484 shares of common stock. In addition, our outstanding shares of Series A preferred stock bear a dividend of 5% per year, or approximately \$24,000 per year. We have the option to pay the dividend in shares of our common stock. In 2008 and 2007, we paid the dividend in an aggregate of 10,910 and 3,820 shares of common stock in each such year, respectively, and anticipate that we will be obligated to issue at least this many shares annually to the holders of the Series A preferred stock so long as such shares are issued and outstanding.

***We identified material weaknesses in our internal control over financial reporting for the fiscal year ended December 31, 2008, which material weaknesses we believe we have remedied as of the date of this prospectus. If we fail to maintain effective internal control over financial reporting, we may not be able to maintain effective disclosure controls and procedures and accurately report our financial results or prevent fraud.***

We are subject to reporting obligations under the U.S. securities laws. The SEC, as required by Section 404 of the Sarbanes-Oxley Act of 2002, adopted rules requiring every public company to include a management report of such company's internal control over financial reporting in its annual report, which contains management's assessment of the effectiveness of the Company's internal control over financial reporting. This requirement began to apply to us beginning with our annual report on Form 10-KSB for the year ended December 31, 2007.

Christopher J. Reed, our Chief Executive Officer and James Linesch, our Chief Financial Officer, conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, our management concluded that our internal control over financial reporting was ineffective as of December 31, 2008 and 2007. A material weakness, as defined in standards established by the Public Company Accounting Oversight Board (United States) is a deficiency or combination of deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis.

Based upon management's assessment, we identified the following material weaknesses as of December 31, 2008:

- Insufficient disaster recovery or backup of core business functions,
- Lack of segregation of duties, and
- Lack of documented and reviewed system of internal control

With regard to the identified material weakness, we did not restate any financial results for any prior periods and believe that the identified material weakness did not have any material effect on the accuracy of our financial statements prepared with respect to any prior fiscal period. Despite the identified weaknesses in our internal control procedures, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2008, such disclosure controls and procedures were effective to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and accumulated and communicated to our management, including our Chief Executive Officer and former Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

We are implementing remediation steps to eliminate identified material weaknesses in our internal controls over financial reporting, including the following:

- ***Insufficient disaster recovery or backup of core business functions.*** Inadequate backup or critical data and software used by our business could cause loss of financial data and business interruptions, should a disaster occur. We have implemented regular backup procedures for our data relating to our financial reporting, which include off-site storage. We are planning to also install a remote server running the software programs used for our financial reporting processes, so that we can quickly recover our backup data and use it at a remote location, in the event of a disaster. We anticipate this additional measure to be completed in the next quarter.
- ***Lack of segregation of duties.*** We have limited staff in our corporate offices and, as such, there is a lack of segregation of duties. With the resignation of our Chief Financial Officer in April 2008, our Chief Executive Officer assumed the duties of both President and Chief Financial Officer. Many functions, including purchasing, accounts payable, bank reconciliations and month end closings, have not been adequately segregated. In January 2009, we hired a Chief Financial Officer, adding to the management oversight of financial accounting processes. We now have separate individuals performing purchasing, accounts payable processing, and bank reconciliations. Our Chief Financial Officer supervises and reviews the month end closing process. Our Chief Operating Officer oversees the cash disbursements. Checks are signed by the Chief Executive Officer. At this time, we believe that we have established adequate segregation of duties to the extent possible with our small staff size. The close supervision and oversight by management also mitigates the remaining weakness in internal controls resulting from a lack of segregation of duties.
- ***Lack of documented and reviewed system of internal control.*** We have a material weakness due to the lack of a documented and reviewed system of internal controls. We have determined that to perform the processes and remediate this internal control weakness, we will either need to engage an internal control consultant or reassign existing personnel. We have started to enhance some of our key internal control systems surrounding inventory purchasing and control, and to document those changes; however, this process is on-going and the implementation of policies and procedures may take several quarters.

In the future, an independent registered public accounting firm will be required to attest to and report on management's assessment of the effectiveness of our system of internal control over financial reporting. Despite our remediation efforts, our management may conclude that our system of internal control over our financial reporting is not effective. Moreover, even if our management concludes that our system of internal control over financial reporting is effective, our independent registered public accounting firm may still decline to attest to our management's assessment or may issue a report that is qualified if it is not satisfied with our controls or the level at which our controls are documented, designed, operated, or reviewed, or if it interprets the relevant requirements differently from us.

Our reporting obligations as a public company will place a significant strain on our management, operational, and financial resources and systems for the foreseeable future. An effective system of internal control, particularly as it relates to revenue recognition, is necessary for us to produce reliable financial reports and is important to help prevent fraud. As a result, our failure to achieve and maintain effective system of internal control over financial reporting could result in the loss of investor confidence in the reliability of our financial statements, which in turn could harm our business and negatively impact the trading price of our stock. Furthermore, we anticipate that we will incur considerable costs and use significant management time and other resources in an effort to comply with Section 404 and other requirements of the Sarbanes-Oxley Act.

***Our certificate of incorporation and by-laws contain provisions that may discourage, delay or prevent a change in our management team that stockholders may consider favorable.***

Our certificate of incorporation, our bylaws and Delaware law contain provisions that may have the effect of preserving our current management, such as:

- authorizing the issuance of “blank check” preferred stock without any need for action by stockholders; and
- permitting stockholder action by written consent.

These provisions could allow our board of directors to affect your rights as a stockholder since our board of directors can make it more difficult for common stockholders to replace members of the board. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt to replace our current management team.

## USE OF PROCEEDS

Assuming full participation in the rights offering, we estimate that the net proceeds from the rights offering will be approximately \$2,673,642, after deducting expenses related to this offering payable by us estimated at approximately \$326,358.

We intend to use the net proceeds received from the exercise of the rights primarily for production of inventory and marketing, as well as for general working capital purposes.

If we fail to raise capital by the end of 2009, we would expect to have to significantly decrease operating expenses which will curtail the growth of our business.

## DETERMINATION OF OFFERING PRICE

The conversion price for the shares of Series B Preferred in this offering was set by our board of directors and approximates a slight premium to the current trading value of our common stock as of the date of this prospectus. In determining the subscription price, the board of directors considered, among other things, the following factors:

- the historical and current market price of our common stock;
- the fact that holders of rights will have an over-subscription right;
- the terms and expenses of this offering relative to other alternatives for raising capital,
- the size of this offering; and
- the general condition of the securities market.

The subscription price does not necessarily bear any relationship to the book value of our assets, results of operations, cash flows, losses, financial condition or any other established criteria for value. You should not consider the subscription price as an indication of the value of the Series B Preferred. As of the date of this prospectus, our common stock traded below the subscription price.

## CAPITALIZATION

The following table sets forth our capitalization, cash and cash equivalents on an actual basis as of March 31, 2009.

**At March  
31, 2009**

**Actual  
(dollars in  
thousands)**

Cash	108
Total liabilities	<u>5,446</u>
Common stock, \$.0001 par value, 19,500,000 shares authorized, 9,107,177 shares issued and outstanding at March 31, 2009	1
Series A Preferred Stock, \$10 par value, 500,000 shares authorized, 47,121 shares outstanding at March 31, 2009	471
Series B Preferred Stock, \$10 par value, 300,000 shares authorized, none issued and outstanding at March 31, 2009	
Additional paid-in capital	18,698
Accumulated Deficit	<u>(15,417)</u>
Total stockholders' Equity	<u>3,753</u>
Total liabilities and stockholders' equity	<u>\$ 9,199</u>

#### **DILUTION**

Purchasers of our Series B Preferred in the rights offering will experience an immediate and substantial dilution of the net tangible book value per share of our common stock. Our net tangible book value as of March 31, 2009 was approximately \$2,953,000, or \$0.32 per share of our common stock (based upon 9,107,177 shares of our common stock outstanding). Net tangible book value per share is equal to our total net tangible book value, which is our total tangible assets less our total liabilities, divided by the number of shares of our outstanding common stock. Dilution per share equals the difference between the amount per share of common stock underlying the Series B Preferred paid by purchasers in this rights offering and the net tangible book value per share of our common stock immediately after the rights offering.

After giving effect to our sale of 300,000 shares of Series B Preferred, or [ ] shares of common stock issuable upon conversion of the convertible preferred stock at a public offering price of \$[ ] per share, and after deduction of estimated offering expenses of \$326,358 payable by us, our net tangible book value as of March 31, 2009 would have been approximately \$[ ], or \$[ ] per share of common stock. This represents an immediate increase of \$[ ] in net tangible book value per share of common stock to our existing stockholders and an immediate dilution in net tangible book value of [ ] per share of common stock to purchasers of units in this offering. The following table illustrates this per share dilution (assuming a fully subscribed for rights offering of 300,000 shares of Series B Preferred at the subscription price of \$10.00 per share):

Subscription price per share of Series B Preferred	\$10.00
Net tangible book value per share of common stock prior to the rights offering	\$[ ]
Increase per share of common stock attributable to the rights offering	\$[ ]
Pro forma net tangible book value per share of common stock after the rights offering	\$[ ]
Dilution in net tangible book value per share of common stock to purchasers	\$[ ]

## DESCRIPTION OF SECURITIES TO BE REGISTERED

The following is a summary of some of the terms of the Series B Preferred and a description of our common stock. This summary contains a description of the material terms of the securities but is not necessarily complete. We refer you to our certificate of incorporation, certificates of designation of our preferred stock and by-laws, copies of which are available upon request as described under “Where You Can Find Additional Information.”

We have the authority to issue 20,000,000 shares of capital stock, consisting of 19,500,000 shares of common stock, \$0.0001 par value per share, and 500,000 of preferred stock, \$10.00 par value per share, which can be issued from time to time by our board of directors on such terms and conditions as they may determine. As of the date of this prospectus, there were approximately [ ] shares of common stock outstanding, 47,121 shares of Series A Convertible Preferred Stock outstanding and no shares of Series B Preferred outstanding.

### Series B Convertible Preferred Stock

**General.** We expect to issue 300,000 shares of Series B Preferred in the rights offering and have designated an aggregate of 500,000 of our preferred shares as Series B Preferred.

**Ranking.** With respect to the payment of dividends and amounts upon liquidation, the Series B Preferred will rank equally with any other class or series of our stock that ranks on a par with the Series B Preferred in the payment of dividends and in the distribution of assets on any dissolution, winding-up and liquidation of Reed’s, Inc., if any, which we refer to as “Parity Stock,” will rank senior to our common stock and any other class or series of our stock over which the Series B Preferred has preference or priority in the payment of dividends or in the distribution of assets on any dissolution, winding-up and liquidation of Reed’s Inc., which we refer to as “Junior Stock,” and will rank junior, in all matters expressly provided, to our preferred stock designated as Series A Convertible Preferred stock and any class or series of capital stock of Reed’s, Inc. specifically ranking by its terms senior to the Series B Preferred “Senior Stock”.

**Dividends.** Subject to the prior payment in full of any dividends to which any Senior Stock is entitled pursuant to the Certificate of Incorporation, the holders of the Series B Preferred shall be entitled to receive dividends payable in kind, in common stock or in cash, in our sole discretion. Such dividends shall be cumulative and non-compounding and accrue on a daily basis for a period of three (3) years from the date of issuance of the Series B Preferred, at an annual rate equal to eight percent (8%) of the original purchase price of \$10.00. If we elect to pay any Series B Dividend due in common stock (“Interest Shares”), the issuance price of the Interest Shares will be equal to the 10-day volume-weighted average price of the common stock on the principal national securities exchange on which such common stock is traded.

**Conversion Rights.** Each share of the Series B Preferred will be convertible at the election of the holder into shares of our common stock by dividing the \$10.00 stated value of the Series B Preferred by a conversion price, which will initially be \$[ ]. The conversion price will be adjusted to reflect subdivisions or combinations of our common stock such as stock splits, stock dividends, recapitalizations or reverse splits.

**Mandatory Conversion at Our Option.** At any time after the original purchase date, if the closing price of our common stock as reported by the principal exchange or quotation system on which such common stock is traded or reported equals or exceeds \$[ ] per share of common stock, then we shall have the right to cause all (but not less than all) outstanding shares of Series B Preferred Stock to be automatically converted into shares of common stock.

**Mandatory Redemption.** At any time after the second anniversary of the original purchase date, we may redeem all, but not less than all, of the outstanding shares of Series B Preferred at our sole discretion, at a price equal to the greater of (i) one hundred ten percent (110%) of the original purchase price, plus an amount equal to any unpaid and accrued dividends and (ii) the Fair Market Value of such number of shares of common stock which the holder of the redeemed Series B Preferred would be entitled to receive had the redeemed Series B Preferred been converted immediately prior to the redemption.

**Voting.** Holders of the Series B Preferred will have no voting rights, except as required by law.

**Liquidation.** In the event of any liquidation, dissolution or winding up of Reed's, whether voluntary or involuntary, after payment or provision for payment of debts and other liabilities of Reed's and all amounts due and owing to the holders of outstanding shares of Senior Stock, if any, each holder of Series B Preferred, before any distribution or payment is made upon any Junior Stock, shall be entitled to receive, out of our assets legally available for distribution to stockholders, an amount equal to the greater of (i) the sum of (A) the original purchase price of such shares of Series B Preferred plus (B) an amount equal to any unpaid and accrued dividends thereon up to and including the date of the liquidation event and (ii) if such share of Series B Preferred were then convertible into common stock, such amount which the holder of Series B Preferred would be entitled to receive in connection with a liquidation event if such holder had converted his, her or its Series B Preferred immediately prior to the occurrence of the liquidation event.

**Anti-Dilution Rate Adjustment.** The conversion rate will be adjusted, without duplication, if certain events occur:

*Adjustments for Subdivisions or Combinations of Common Stock.* In the event the outstanding shares of common stock shall be subdivided by stock split, stock dividend or otherwise, into a greater number of shares of common stock, the conversion price of the Series B Preferred then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of common stock shall be combined or consolidated into a lesser number of shares of common stock, the conversion price of the Series B Preferred then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

*Adjustments for Non-Cash Dividends and Other Distributions.* In the event Reed's makes, or fixes a record date for the determination of holders of common stock entitled to receive, any distribution (excluding repurchases of securities by the corporation not made on a pro rata basis) payable in property or in securities of Reed's other than shares of common stock, then and in each such event the holders of Series B Preferred shall receive, at the time of such distribution, the amount of property or the number of securities of Reed's that they would have received had their Series B Preferred been converted into common stock on the date of such event.

*Adjustments for Reorganizations, Reclassifications or Similar Events.* If the common stock shall be changed into the same or a different number of shares of any other class or classes of stock or other securities or property, whether by capital reorganization, reclassification or otherwise, then each share of Series B Preferred shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of common stock of Reed's deliverable upon conversion of such shares of Series B Preferred shall have been entitled upon such reorganization, reclassification or other event.

## **Common Stock**

Holders of our common stock are entitled to one vote per share on all matters requiring a vote of stockholders, including the election of directors.

We are a Delaware corporation and our certificate of incorporation does not provide for cumulative voting. However, we may be subject to section 2115 of the California Corporations Code. Section 2115 provides that, regardless of a company's legal domicile, specified provisions of California corporations law will apply to that company if the company meets requirements relating to its property, payroll and sales in California and if more than one-half of its outstanding voting securities are held of record by persons having addresses in California, and such company is not listed on certain national securities exchanges or on the NASDAQ National Market. Among other things, section 2115 may limit our ability to elect a classified board of directors and requires cumulative voting in the election of directors. Cumulative voting is a voting scheme which allows minority stockholders a greater opportunity to have board representation by allowing those stockholders to have a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the stockholder's shares are entitled and to "cumulate" those votes for one or more director nominees. Generally, cumulative voting allows minority stockholders the possibility of board representation on a percentage basis equal to their stock holding, where under straight voting those stockholders may receive less or no board representation. The Supreme Court of Delaware has recently ruled, on an issue unrelated to voting for directors, that section 2115 is an unconstitutional exception to the "internal affairs doctrine" that requires the law of the incorporating state to govern disputes involving a corporation's internal affairs, and is therefore inapplicable to Delaware corporations. The California Supreme Court has not definitively ruled on section 2115, although certain lower courts of appeal have upheld section 2115. As a result, there is a conflict as to whether section 2115 applies to Delaware corporations. Pending the resolution of these conflicts, in the event our shares are not listed on a national exchange, we will not elect directors by cumulative voting.

Christopher J. Reed, our President, Chief Executive Officer and Chairman of the board of directors, holds approximately 35% of our outstanding common stock. Consequently, Mr. Reed, as our principal stockholder, has the power, and may continue to have the power, to have significant control over the outcome of any matter on which the stockholders may vote.

Holders of our common stock are entitled to receive dividends only if we have funds legally available and the board of directors declares a dividend.

Holders of our common stock do not have any rights to purchase additional shares. This right is sometimes referred to as a preemptive right.

Upon a liquidation or dissolution, whether in bankruptcy or otherwise, holders of common stock rank behind our secured and unsecured debt holders, and behind any holder of any series of our preferred stock.

## **Anti-Takeover Effects of Delaware Law and Our Certificate of Incorporation**

Certain provisions of Delaware law and our certificate of incorporation could make more difficult the acquisition of us by means of a tender offer or otherwise, and the removal of incumbent officers and directors. These provisions are expected to discourage certain types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of us.

Our Certificate of Incorporation and Bylaws include provisions that allow the board of directors to issue, without further action by the stockholders, up to 500,000 shares of undesignated preferred stock.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law regulating corporate takeovers. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging under certain circumstances, in a business combination with an interested stockholder for a period of three years following the date the person became an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder.
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (1) shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer.
- on or subsequent to the date of the transaction, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least  $66 \frac{2}{3}$  % of the outstanding voting stock which is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting securities. The existence of this provision may have an anti-takeover effect with respect to transactions our board of directors does not approve in advance. Section 203 may also discourage attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

These provisions of Delaware law and our certificate of incorporation could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

#### **Transfer Agent**

Transfer On-Line, Inc., 317 SW Alder Street, 2nd Floor, Portland, Oregon, 97204 is our registrar and transfer agent for our common stock. We have engaged Continental Stock Transfer & Trust Company to act as the subscription agent in connection with this offering and to act as transfer agent for the rights to be distributed in this offering.

## INTERESTS OF NAMED EXPERTS AND COUNSEL

Weinberg & Company, P.A., independent registered public accounting firm, has audited our financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2008, as set forth in their report, which is incorporated by reference in the prospectus and elsewhere in this registration statement. Our financial statements are incorporated by reference in reliance on Weinberg & Company, P.A.'s report, given on their authority as experts in accounting and auditing. The validity of the shares of Series B Preferred offered hereby has been passed upon for us by Qashu & Schoenthaler LLP, Los Angeles, California. Weinstein Smith LLP, New York, New York, has acted as counsel to the dealer-manager. None of these experts have been employed by us on a contingent basis with respect to the sale or registration under this prospectus of the securities. None of these experts have been employed by us on a contingent basis with respect to the sale or registration under this prospectus of the securities.

## THE RIGHTS OFFERING

### Terms of the Offer

We are distributing at no charge to the holders of our common stock on [ ], 2009, subscription rights to purchase up to an aggregate of 300,000 shares of our Series B Preferred. We expect the total purchase price for the securities offered in this rights offering to be \$3,000,000, assuming full participation in the rights offering. See below for additional information regarding subscription by DTC participants.

Each record date stockholder is being issued one right for every share of our Series B Preferred owned on the record date. Each right carries with it a basic subscription right and an over-subscription right.

Four (4) rights entitle the holder to purchase one share of Series B Preferred at the subscription price of \$10.00 per share, which we refer to as the basic subscription right.

Holders who fully exercise their basic subscription rights will be entitled to subscribe for additional shares of Series B Preferred that remain unsubscribed as a result of any unexercised basic subscription rights, which we refer to as the over-subscription right. The over-subscription right allows a holder to subscribe for an additional amount equal to up to 400% of the shares for which such holder was otherwise entitled to subscribe. Over-subscription rights are exercisable at the same price per whole share as basic subscription rights. Over-subscription rights will be allocated *pro rata* among rights holders who over-subscribed, based on the number of over-subscription shares to which they subscribed. Rights may only be exercised for whole numbers of shares; no fractional shares of Series B Preferred will be issued in this offering. The percentage of remaining shares each over-subscribing rights holder may acquire will be rounded down to result in delivery of whole shares. You must exercise your rights with respect to the basic subscription right and the over-subscription right at the same time.

Rights may be exercised at any time during the subscription period, which commences on [ ], 2009 and ends at 5:00 p.m., New York City time, on [ ], 2009, the expiration date, unless extended by us for up to an additional 30 trading days, in our sole discretion.

The rights will be evidenced by subscription rights certificates which will be mailed to stockholders, except as discussed below under "Foreign Stockholders." The subscription rights are transferable and will be listed for trading on the NASDAQ Capital Market under the symbol "REEDR" during the course of this offering.

For purposes of determining the number of shares a rights holder may acquire in this offering, brokers, dealers, custodian banks, trust companies or others whose shares are held of record by Cede & Co. or by any other depository or nominee will be deemed to be the holders of the rights that are issued to Cede or the other depository or nominee on their behalf.

There is no minimum subscription amount. We will we not raise more than \$3,000,000 in this offering.

**Allocation and Exercise of Over-Subscription Rights**

In order to properly exercise an over-subscription right, a rights holder must: (i) indicate on its subscription rights certificate that it submits with respect to the exercise of the rights issued to it how many additional shares it is willing to acquire pursuant to its over-subscription right and (ii) *concurrently* deliver the subscription payment related to your over-subscription right at the time you make payment for your basic subscription right.

If there are sufficient remaining shares, all over-subscription requests will be honored in full. If requests for shares pursuant to the over-subscription right exceed the remaining shares available, the available remaining shares will be allocated *pro rata* among rights holders who over-subscribe based on the number of over-subscription shares to which they subscribe. The percentage of remaining shares each over-subscribing rights holder may acquire will be rounded down to result in delivery of whole shares. The allocation process will assure that the total number of remaining shares available for over-subscriptions is distributed on a *pro rata* basis. The formula to be used in allocating the available excess shares is as follows:

$$\frac{\text{Number of Over-Subscription Shares Subscribed to by Exercising Rights Holder}}{\text{Total Number of Over-Subscription Shares Available for Rights Holders Exercising Their Over-Subscription Right}} \times \text{Shares Available for Rights Holders Exercising Their Over-Subscription Right}$$

Rights payments for basic subscriptions and over-subscriptions will be deposited upon receipt by the subscription agent and held in a segregated account with the subscription agent pending a final determination of the number of shares to be issued pursuant to the over-subscription right. If the pro rated amount of shares allocated to you in connection with your over-subscription right is less than your over-subscription request, then the excess funds held by the subscription agent on your behalf will be returned to you promptly without interest or deduction. We will deliver certificates representing your shares of our Series B Preferred or credit your account at your nominee holder with shares of our Series B Preferred that you purchased pursuant to your over-subscription right as soon as practicable after the rights offering has expired and all proration calculations and reductions contemplated by the terms of the rights offering have been effected.

Brokers, dealers, custodian banks, trust companies and other nominee holders of rights will be required to certify to the subscription agent, before any over-subscription right may be exercised with respect to any particular beneficial owner, as to the aggregate number of rights exercised pursuant to the basic subscription right and the number of shares subscribed for pursuant to the over-subscription right by such beneficial owner.

## **Pro Rata Allocation if Insufficient Shares are Available for Issuance**

If we receive a sufficient number of subscriptions, the aggregate dollar amount of the exercises could exceed the maximum dollar amount of this offering. In each case, we would reduce on a *pro rata* basis, the number of subscriptions we accept so that: (i) we will not become obligated to issue, upon exercise of the subscriptions, a greater number of shares of Series B Preferred than we have authorized and available for issuance and (ii) the gross proceeds of this offering will not exceed the maximum dollar amount of this offering. In the event of any *pro rata* reduction, we would first reduce over-subscriptions prior to reducing basic subscriptions.

## **Expiration of the Rights Offering and Extensions, Amendments, and Termination**

*Expiration and Extensions.* You may exercise your subscription rights at any time before 5:00 p.m., New York City time, on [ ], 2009, the expiration date of the rights offering, unless extended. If the rights offering is undersubscribed, our board of directors may extend the expiration date for exercising your subscription rights for up to an additional 30 trading days, in their sole discretion. If we extend the expiration date, you will have at least ten trading days during which to exercise your rights. Any extension of this offering will be followed as promptly as practicable by an announcement, and in no event later than 9:00 a.m., New York City time, on the next business day following the previously scheduled expiration date.

We may choose to extend the expiration date of the rights in order to give investors more time to exercise their subscription rights in the rights offering. We may extend the expiration date of the rights offering by giving oral or written notice to the subscription agent and information agent on or before the scheduled expiration date. If we elect to extend the expiration date, we will issue a press release announcing such extension no later than 9:00 a.m., New York City time, on the next business day after the most recently announced expiration date.

Any rights not exercised at or before that time will have no value and expire without any payment to the holders of those unexercised rights. We will not be obligated to honor your exercise of subscription rights if the subscription agent receives the documents relating to your exercise after the rights offering expires, regardless of when you transmitted the documents.

*Termination; Cancellation.* We may cancel or terminate the rights offering at any time prior to the expiration date. Any cancellation or termination of this offering will be followed as promptly as practicable by an announcement or termination.

## **Waiver of Maximum Offering Amount**

We may waive the maximum offering amount in our sole discretion. If we elect to waive the maximum offering amount, we will issue a press release announcing such waiver no later than 9:00 a.m., New York City time, on the next business day after the maximum offering amount has been subscribed.

## Reasons for the Rights Offering; Determination of the Offering Price

We are making the rights offering to raise funds for production of inventory, as well as for general working capital purposes. Prior to approving the rights offering, our board of directors carefully considered current market conditions and financing opportunities, as well as the potential dilution of the ownership percentage of the existing holders of our common stock that may be caused by the rights offering.

After weighing the factors discussed above and the effect of the \$3,000,000 in additional capital, before expenses, that may be generated by the sale of shares pursuant to the rights offering, our board of directors believes that the rights offering is in the best interests of our company. As described in the section of this prospectus entitled "Use of Proceeds," the proceeds from the rights offering, less fees and expenses incurred in connection with this offering, will be used for production of inventory, as well as for general working capital purposes. Although we believe that the rights offering will strengthen our financial condition, our board of directors is not making any recommendation as to whether you should exercise your subscription rights.

The subscription price per share for the rights offering was set by our board of directors. In determining the subscription price, the board of directors considered, among other things, the following factors:

- the historical and current market price of our common stock;
- the fact that holders of rights will have an over-subscription right;
- the terms and expenses of this offering relative to other alternatives for raising capital,
- the size of this offering; and
- the general condition of the securities market.

## Information Agent

MacKenzie Partners, Inc. will act as the information agent in connection with this offering. The information agent will receive for its services a fee estimated to be approximately \$6,500 plus reimbursement of all reasonable out-of-pocket expenses related to this offering. The information agent can be contacted at the address below:

MacKenzie Partners, Inc.  
105 Madison Avenue  
New York, NY 10016  
Collect: (212) 929-5500  
Toll-free: (800) 322-2885  
Email: [reedrights@mackenziepartners.com](mailto:reedrights@mackenziepartners.com)

## Subscription Agent

Continental Stock Transfer & Trust Company will act as the subscription agent in connection with this offering. The subscription agent will receive for its administrative, processing, invoicing and other services a fee estimated to be approximately \$15,000 plus reimbursement for all reasonable out-of-pocket expenses related to this offering.

Completed subscription rights certificates must be sent together with full payment of the subscription price for all shares subscribed for through the exercise of the subscription right and the over-subscription right to the subscription agent by one of the methods described below.

We will accept only properly completed and duly executed subscription rights certificates actually received at any of the addresses listed below, at or prior to 5:00 p.m., New York City time, on the expiration date of this offering. See "Payment for Shares" below. In this prospectus, close of business means 5:00 p.m., New York City time, on the relevant date.

### **Subscription Rights Certificate**

#### **Delivery Method**

#### **Address/Number**

By Mail/Commercial Courier/Hand Delivery:

Continental Stock Transfer & Trust Company  
17 Battery Place, 8th Floor  
New York, NY 10004  
(212) 509-4000, x 536

Delivery to an address other than the address listed above will not constitute valid delivery and, accordingly, may be rejected by us.

Any questions or requests for assistance concerning the method of subscribing for shares or for additional copies of this prospectus or subscription rights certificates may be directed to the subscription agent at its telephone number and address listed below:

Continental Stock Transfer & Trust Company  
Attn: [                    ]  
17 Battery Place, 8th Floor  
New York, NY 10004  
(212) 509-4000, x 536

Stockholders may also contact their broker, dealer, custodian bank, trustee or other nominee for information with respect to this offering.

### **Methods for Exercising Rights**

Rights are evidenced by subscription rights certificates that, except as described below under "Foreign Stockholders," will be mailed to record date stockholders or, if a record date stockholder's shares are held by a depository or nominee on his, her or its behalf, to such depository or nominee. Rights may be exercised by completing and signing the subscription rights certificate that accompanies this prospectus and mailing it in the envelope provided, or otherwise delivering the completed and duly executed subscription rights certificate to the subscription agent, together with payment in full for the shares at the subscription price by the expiration date of this offering. Completed subscription rights certificates and related payments must be received by the subscription agent prior to 5:00 p.m., New York City time, on or before the expiration date, at the offices of the subscription agent at the address set forth above.

### *Exercise of the Over-Subscription Right*

Rights holders who fully exercise all basic subscription rights issued to them may participate in the over-subscription right by indicating on their subscription rights certificate the number of shares they are willing to acquire. If sufficient remaining shares are available after the basic subscription, all over-subscriptions will be honored in full; otherwise, remaining shares will be allocated on a *pro rata* basis as described under “Allocation of Over-Subscription Right” above.

### *Record Date Stockholders Whose Shares are Held by a Nominee*

Record date stockholders whose shares are held by a nominee, such as a broker, dealer, custodian bank, trustee or other nominee, must contact that nominee to exercise their rights. In that case, the nominee will complete the subscription rights certificate on behalf of the record date stockholder and arrange for proper payment by one of the methods set forth under “Payment for Shares” below.

### *Nominees*

Nominees, such as brokers, dealers, custodian banks, trustees or depositories for securities, who hold shares for the account of others, should notify the respective beneficial owners of the shares as soon as possible to ascertain the beneficial owners’ intentions and to obtain instructions with respect to the rights. If the beneficial owner so instructs, the nominee should complete the subscription rights certificate and submit it to the subscription agent with the proper payment as described under “Payment for Shares” below.

### *General*

All questions as to the validity, form, eligibility (including times of receipt and matters pertaining to beneficial ownership) and the acceptance of subscription forms and the subscription price will be determined by us, which determinations will be final and binding. No alternative, conditional or contingent subscriptions will be accepted. We reserve the right to reject any or all subscriptions not properly submitted or the acceptance of which would, in the opinion of our counsel, be unlawful.

We reserve the right to reject any exercise if such exercise is not in accordance with the terms of this rights offering or not in proper form or if the acceptance thereof or the issuance of shares of our Series B Preferred thereto could be deemed unlawful. We reserve the right to waive any deficiency or irregularity with respect to any subscription rights certificate. Subscriptions will not be deemed to have been received or accepted until all irregularities have been waived or cured within such time as we determine in our sole discretion. We will not be under any duty to give notification of any defect or irregularity in connection with the submission of subscription rights certificates or incur any liability for failure to give such notification.

### **Rights are Transferable**

The rights are transferable and will be listed for trading on the NASDAQ Capital Market under the symbol “REEDR” during the course of this offering.

### **Foreign Stockholders**

Subscription rights certificates will not be mailed to foreign stockholders. A foreign stockholder is any record holder of common stock on the record date whose address of record is outside the United States and Canada, or is an Army Post Office (APO) address or Fleet Post Office (FPO) address. Foreign stockholders will be sent written notice of this offering. The subscription agent will hold the rights to which those subscription rights certificates relate for these stockholders’ accounts, subject to that stockholder making satisfactory arrangements with the subscription agent for the exercise of the rights, and follow the instructions of such stockholder for the exercise of the rights if such instructions are received by the subscription agent at or before [ ], New York City time, on [ ], 2009, three business days prior to the expiration date (or, if this offering is extended, on or before three business days prior to the extended expiration date). If no instructions are received by the subscription agent by that time, the rights will expire worthless without any payment to the holders of those unexercised rights.



## **Delivery of Stock Certificates**

Stockholders whose shares are held of record by Cede & Co. or by any other depository or nominee on their behalf or on behalf of their broker, dealer, custodian bank, trustee or other nominee will have any shares that they acquire credited to the account of Cede & Co. or the other depository or nominee. With respect to all other stockholders, stock certificates for all shares acquired will be mailed promptly after payment for all the shares subscribed for has cleared.

## **Distribution Arrangements**

Source Capital Group, Inc., which is a broker-dealer and member of FINRA (formerly the NASD), is the dealer-manager for this offering. The principal business address of the dealer-manager is 276 Post Road West, Westport, CT 06880.

Under the terms and subject to the conditions contained in a dealer-manager agreement which we will enter into, the dealer-manager will act as sole placement agent and provide marketing services in connection with this offering and will solicit the exercise of rights and participation in the over-subscription right. This offering is not contingent upon any number of rights being exercised. Source Capital Group, Inc. is not underwriting any of the rights or the shares of our Series B Preferred being sold in this offering.

Pursuant to the dealer-manager agreement, we are obligated to pay to Source Capital Group, Inc. as compensation 7% of the gross proceeds of this offering in cash, warrants to purchase 5% of the shares of common stock underlying the Series B Preferred sold in this offering priced at 125% of the effective initial conversion price and a non-accountable expense allowance equal to \$10,000 upon completion of the rights offering and to indemnify the dealer-manager for, or contribute to losses arising out of, certain liabilities, including liabilities under the Securities Act of 1933. The warrants will not be redeemable. The warrants and the shares issuable upon exercise of the warrants will be non-transferable for a period of six months following the expiration date of the offering, except that they may be transferred to any successor, manager or member of Source Capital Group, Inc. as permitted by FINRA Rule 5110(g). The warrants may be exercised in full or in part as of the date of issuance and provide for cashless exercise, customary anti-dilution rights and contain provisions for one demand registration of the sale of the underlying shares of common stock for a period of five years after the expiration date of the offering at our expense, an additional demand registration at the warrant holder's expense and piggyback registration rights for a period of five years after the expiration date of the offering at our expense. Pursuant to the dealer-manager agreement we will enter into with Source Capital Group, Inc., Source Capital Group, Inc. will not be subject to any liability to us in rendering the services contemplated by the dealer-manager agreement except for any act of bad faith or gross negligence of Source Capital Group, Inc.

Source Capital Group, Inc. and its affiliates may provide to us, from time to time, in the future, in the ordinary course of their business, certain financial advisory, investment banking and other services for which they will be entitled to receive fees.

## THE REOFFERING OF REMAINING SHARES

### Preliminary Nonbinding Subscriptions During Pendency Of Rights Offering

We will permit prospective investors who are not shareholders eligible to participate in the rights offering and who desire to purchase shares of our Series B Preferred the right to submit nonbinding subscriptions with respect to one or more shares of the Series B Preferred. Prospective investors who wish to do so should complete, date, and sign the preliminary subscription agreement which accompanies this prospectus and return it to Reed's, Inc., 13000 South Spring Street, Los Angeles, California 90061, attention: Christopher J. Reed.

Preliminary subscriptions are NOT binding on subscribers. Do NOT send payment for your shares at this time. Upon the completion of our rights offering, we will furnish a prospectus supplement that sets forth the results of our rights offering and the amount of unsubscribed shares accompanied by an acknowledgment of subscription to all subscribers. A copy of the acknowledgment of subscription accompanies this prospectus. Upon receipt of the prospectus supplement, each subscriber will be asked to do the following:

- Complete, date, and sign the acknowledgment of subscription.
- Make a check payable to "Reed's, Inc." in an amount equal to the subscription price of \$10.00 times the number of shares of Series B Preferred subscribed for.
- Return the completed acknowledgment of subscription and check to Reed's, Inc., 13000 South Spring Street, Los Angeles, California 90061, attention: Christopher J. Reed.

**UPON RECEIPT BY REED'S OF THE ACKNOWLEDGMENT OF SUBSCRIPTION, THE PRELIMINARY SUBSCRIPTION AGREEMENT WILL BECOME BINDING ON AND IRREVOCABLE BY THE SUBSCRIBER UNTIL THE EXPIRATION DATE OF THE REOFFER PERIOD.**

### Expiration Date

The reoffer period will expire at the earlier of [ ] p.m., New York City time, on [ ], 2009 or the date on which we have accepted subscriptions for all shares remaining for purchase as reflected in the prospectus supplement. We refer to this date as the "Reoffer Expiration Date."

### Discretion To Accept Subscriptions

We have the right, in our sole discretion, to accept or reject any subscription in whole or in part on or before the Reoffer Expiration Date. If we receive subscriptions for a total of more than that number of shares of Series B Preferred available for sale in the reoffer period, we may limit the number of shares sold to any subscriber. As a result, you may not receive any or all of the shares for which you subscribe.

We will notify subscribers no later than ten days after the expiration date as to whether and to what extent their subscriptions have been accepted. If we do not accept all or a portion of a subscription, we will return to the subscriber the unaccepted portion of the subscription funds, without interest.

### **Issuance of Stock Certificates**

Promptly after the acceptance of a subscription, we will issue stock certificates representing the shares of Series B Preferred purchased by investors in the reoffer period. We will follow the instructions contained in the accepted Subscription Agreements when we issue the stock certificates.

### **Subscription Proceeds**

We will promptly deposit all subscription proceeds as we receive them in a noninterest-bearing deposit account with [ ]. Upon our acceptance of a subscription, the related subscription proceeds due to us will become immediately available for our use. Promptly following the Reoffer Expiration Date, we will refund any amounts due to subscribers whose subscriptions we did not accept as described under “—Discretion to Accept Subscriptions” above.

### **PLAN OF DISTRIBUTION**

On or about June , 2009, we will distribute the rights, subscription rights certificates and copies of this prospectus to the holders of our common stock on the record date. Rights holders who wish to exercise their rights and purchase shares of our Series B Preferred must complete the rights certificate and return it with payment for the shares to the subscription agent at the following address:

Continental Stock Transfer & Trust Company  
Attn: Reorganization Department  
17 Battery Place, 8th Floor  
New York, NY 10004

See “The Rights Offering — Method of Exercising Rights.” If you have any questions, you should contact Continental Stock Transfer & Trust Company.

Other than as described in this prospectus, we do not know of any existing agreements between any shareholder, broker, dealer, underwriter or agent relating to the sale or distribution of the underlying common stock.

To the extent required, we will file, during any period in which offers or sales are being made, a supplement to this prospectus which sets forth, with respect to a particular offering, the specific number of shares of common stock to be sold, the name of the holder, the sales price, the name of any participating broker, dealer, underwriter or agent, any applicable commission or discount and any other material information with respect to the plan of distribution not previously disclosed.

To the extent we have shares remaining available (after taking into consideration all requested over-subscription rights), we will offer those shares to the public at the \$10.00 per share purchase price.

Source Capital Group, Inc., which is a broker-dealer and member of FINRA (formerly the NASD), is the dealer-manager for this offering. The principal business address of the dealer-manager is 276 Post Road West, Westport, CT 06880.

Under the terms and subject to the conditions contained in a dealer-manager agreement which we will enter into, the dealer-manager will act as sole placement agent and provide marketing services in connection with this offering and will solicit the exercise of rights and participation in the over-subscription right. This offering is not contingent upon any number of rights being exercised. Source Capital Group, Inc. is not underwriting any of the rights or the shares of our Series B Preferred being sold in this offering.

Pursuant to the dealer-manager agreement, we are obligated to pay to Source Capital Group, Inc. as compensation 7% of the gross proceeds of this offering in cash, warrants to purchase 5% of the shares of common stock underlying the Series B Preferred sold in this offering priced at 125% of the effective initial conversion price and a non-accountable expense allowance equal to \$10,000 upon completion of the rights offering and to indemnify the dealer-manager for, or contribute to losses arising out of, certain liabilities, including liabilities under the Securities Act of 1933. The warrants will not be redeemable. The warrants and the shares issuable upon exercise of the warrants will be non-transferable for a period of six months following the expiration date of the offering, except that they may be transferred to any successor, manager or member of Source Capital Group, Inc. as permitted by FINRA Rule 5110(g). The warrants may be exercised in full or in part as of the date of issuance and provide for cashless exercise, customary anti-dilution rights and contain provisions for one demand registration of the sale of the underlying shares of common stock for a period of five years after the expiration date of the offering at our expense, an additional demand registration at the warrant holder's expense and piggyback registration rights for a period of five years after the expiration date of the offering at our expense. Pursuant to the dealer-manager agreement we will enter into with Source Capital Group, Inc., Source Capital Group, Inc. will not be subject to any liability to us in rendering the services contemplated by the dealer-manager agreement except for any act of bad faith or gross negligence of Source Capital Group, Inc.

Source Capital Group, Inc. and its affiliates may provide to us, from time to time, in the future, in the ordinary course of their business, certain financial advisory, investment banking and other services for which they will be entitled to receive fees.

#### **MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion is a summary of the material federal income tax consequences of the rights offering to holders of common stock that hold such stock as a capital asset for federal income tax purposes. This discussion is based on laws, regulations, rulings and decisions in effect on the date of this prospectus, all of which are subject to change (possibly with retroactive effect) and to differing interpretations. This discussion applies only to holders that are U.S. persons, which is defined as a citizen or resident of the United States, a domestic partnership, a domestic corporation, any estate the income of which is subject to U.S. federal income tax regardless of its source, and any trust so long as a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

This discussion does not address all aspects of federal income taxation that may be relevant to holders in light of their particular circumstances or to holders who may be subject to special tax treatment under the Internal Revenue Code of 1986, as amended, including, but not limited to, holders who are subject to the alternative minimum tax, holders who are dealers in securities or foreign currency, foreign persons (defined as all persons other than U.S. persons), U.S. holders that have a principal place of business or “tax home” outside the U.S., any entity treated as a partnership for U.S. federal income tax purposes, insurance companies, tax-exempt organizations, banks, financial institutions, broker-dealers, holders who hold common stock as part of a hedge, straddle, conversion or other risk reduction transaction, or who acquired common stock pursuant to the exercise of compensatory stock options or warrants or otherwise as compensation.

We have not sought, and will not seek, an opinion of counsel or a ruling from the Internal Revenue Service regarding the federal income tax consequences of the rights offering or the related share issuances. The IRS could take positions concerning the tax consequences of the rights offering or the related share issuances that are different from those described in this discussion and, if litigated, a court could sustain any such positions taken by the IRS. In addition, the following summary does not address the tax consequences of the rights offering or the related share issuances under foreign, state, or local tax laws.

**THIS SUMMARY IS ONLY A GENERAL DISCUSSION AND IS NOT INTENDED TO BE, AND SHOULD NOT BE CONSTRUED TO BE, LEGAL, OR TAX ADVICE. THE U.S. FEDERAL INCOME TAX TREATMENT OF THE RIGHTS IS COMPLEX AND POTENTIALLY UNFAVORABLE TO U.S. HOLDERS. ACCORDINGLY, EACH U.S. HOLDER WHO ACQUIRES RIGHTS IS STRONGLY URGED TO CONSULT HIS, HER OR ITS OWN TAX ADVISER WITH RESPECT TO THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN INCOME, ESTATE AND OTHER TAX CONSEQUENCES OF THE ACQUISITION OF THE RIGHTS, WITH SPECIFIC REFERENCE TO SUCH PERSON’S PARTICULAR FACTS AND CIRCUMSTANCES.**

**THE FEDERAL TAX DISCUSSION CONTAINED IN THIS PROSPECTUS IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY PERSON FOR THE PURPOSE OF AVOIDING ANY PENALTIES THAT MAY BE IMPOSED BY THE CODE. THE FEDERAL TAX DISCUSSION CONTAINED IN THIS PROSPECTUS WAS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTION DESCRIBED IN THIS PROSPECTUS. PROSPECTIVE INVESTORS SHOULD SEEK ADVICE FROM THEIR OWN INDEPENDENT TAX ADVISORS CONCERNING THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF AN INVESTMENT IN THE COMPANY BASED ON THEIR PARTICULAR CIRCUMSTANCES.**

### **Subscription Rights**

**Receipt.** Generally, the distribution by a corporation to the holders of its common stock of rights to acquire its convertible preferred stock will be treated for tax purposes as a distribution of the convertible preferred stock itself. The distribution by a corporation of convertible preferred stock to holders of its common stock will not be taxable unless the distribution of such stock would result in a “disproportionate” distribution. A distribution of convertible preferred stock will be treated as disproportionate when considering all relevant facts and circumstances such as the time within which the conversion right must be exercised, the dividend rate, the marketability of the stock and the conversion price, the distribution is likely to result in some shareholders exercising their conversion rights and receiving common stock and others receiving money or other property. According to applicable Treasury regulations, a distribution of convertible preferred stock is unlikely to result in a disproportionate distribution under circumstances where (i) the conversion right may be exercised over a long period (e.g., 20 years) and (ii) the dividend rate is consistent with market conditions at the time the convertible preferred stock is distributed. In contrast, Treasury regulations provide that a distribution of convertible preferred stock is likely to result in a disproportionate distribution under circumstances where (i) the conversion right must be exercised within a relatively short period (e.g., four months) and (ii) taking into account additional factors such as the conversion price, dividend rate, redemption provisions and marketability of the convertible preferred stock it may be anticipated that some shareholders will exercise their conversion right and some will not. Because the determination of whether a distribution of convertible preferred stock will be treated as disproportionate or not is based on all relevant facts and circumstances, and because the applicable Treasury regulations only provide specific guidance in the more extreme cases, it is not possible to definitively conclude whether the distribution of the Series B Preferred to holders of common stock would be considered to result in a “disproportionate” distribution.

In the event the IRS successfully asserts that your receipt of subscription rights is currently taxable, the discussion under the heading “Alternative Treatment of Subscription Rights” describes the tax consequences that will result from such a determination. The remainder of the discussion under this heading “Subscription Rights” assumes that the distribution of the subscription rights in the rights offering will not result in a “disproportionate” distribution.

**Tax Basis and Holding Period.** The tax basis of the subscription rights received by a holder in the rights offering will be zero, unless (a) the fair market value of the subscription rights on the date such subscription rights are distributed is equal to at least 15% of the fair market value on such date of the common stock with respect to which the subscription rights are received, or (b) you elect, by attaching a statement to your federal income tax return for the taxable year in which the subscription rights are received, to allocate basis to the subscription rights, in either of which cases, your tax basis in the common stock will be allocated between the common stock and the subscription rights in proportion to their respective fair market values on the date the subscription rights are distributed. Your holding period for the subscription rights received in the rights offering will include your holding period for the common stock with respect to which the subscription rights were received.

**Expiration.** You will not recognize any gain or loss if you allow the subscription rights received in the rights offering to expire, and your tax basis in the common stock with respect to which such subscription rights were distributed will be equal to the tax basis of such common stock immediately before the receipt of the subscription rights in the rights offering.

### **Alternative Treatment of Subscription Rights**

**Receipt.** If the IRS were to successfully assert that the distribution of the subscription rights in the rights offering resulted in a “disproportionate” distribution, each holder would be considered to have received a distribution with respect to such holder’s common stock in an amount equal to the fair market value of the subscription rights received by such holder on the date of the distribution. This distribution generally would be taxed as dividend income to the extent of your ratable share of our current and accumulated earnings and profits. Under current law for taxable years beginning prior to January 1, 2011, so long as certain holding period requirements are satisfied, the maximum federal income tax rate on most dividends received by individuals is generally 15%. Your tax basis in the subscription rights received pursuant to the rights offering would be equal to their fair market value on the date of distribution and the holding period for the rights would begin upon receipt. The remainder of the discussion under this heading “Alternative Treatment of the Subscription Rights” assumes that a holder’s receipt of subscription rights in the rights offering is a taxable event.

**Expiration.** If your subscription rights lapse without being exercised, you will recognize a capital loss equal to your tax basis in such expired subscription rights. The deductibility of capital losses is subject to limitations.

### **Exercise; Tax Basis in and Holding Period of Series B Convertible Preferred Stock**

You will not recognize any gain or loss upon the exercise of the subscription rights received in the rights offering. The tax basis of the Series B Preferred acquired through exercise of the subscription rights will equal the sum of the subscription price for the Series B Preferred and your tax basis, if any, in the subscription rights as described above. Your holding period for the Series B Preferred acquired through exercise of the subscription rights will begin on the date the subscription rights are exercised.

## Series B Convertible Preferred Stock

The following is a summary of certain U.S. federal income tax and, for non-U.S. holders (as defined below), estate tax consequences of the purchase, ownership, conversion and disposition of the Series B Preferred and our common stock received in respect thereof as of the date hereof. Except where noted, this summary deals only with the Series B Preferred and our common stock held as capital assets. As used herein, the term “*U.S. holder*” means a beneficial owner of the Series B Preferred or our common stock that is for U.S. federal income tax purposes:

- an individual citizen or resident of the United States;
- a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a United States person.

As used herein, the term “*non-U.S. holder*” means a beneficial owner of the Series B Preferred or our common stock that is neither a U.S. holder nor a partnership (or other entity treated as a partnership for U.S. federal income tax purposes).

This summary is **not** a detailed description of the U.S. federal income tax consequences applicable to you if you are subject to special treatment under the U.S. federal income tax laws, including if you are:

- a dealer in securities or currencies;
- a financial institution;
- a regulated investment company;
- a real estate investment trust;
- an insurance company;
- a tax-exempt organization;
- a person holding the Series B Preferred or our common stock as part of a hedging, integrated, conversion or constructive sale transaction or a straddle;
- a trader in securities that has elected the mark-to-market method of accounting for your securities;
- a person liable for alternative minimum tax;
- a partnership or other pass-through entity for U.S. federal income tax purposes;
- a person who is an investor in a pass-through entity;
- a U.S. holder whose “functional currency” is not the U.S. dollar;
- a “controlled foreign corporation”;
- a “passive foreign investment company”; or
- a United States expatriate.

This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in U.S. federal income and estate tax consequences different from those summarized below.

If a partnership holds the Series B Preferred or our common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding the Series B Preferred or our common stock, you should consult your own tax advisors.

This summary does not contain a detailed description of all the U.S. federal income and estate tax consequences to you in light of your particular circumstances and does not address the effects of any state, local or non-U.S. tax laws. If you are considering the purchase, ownership or disposition of the Series B Preferred, you should consult your own tax advisors concerning the U.S. federal income and estate tax consequences to you in light of your particular situation as well as any consequences arising under the laws of any other taxing jurisdiction.

## **U.S. Holders**

**Dividends.** Distributions on the Series B Preferred or our common stock will be dividends for U.S. federal income tax purposes to the extent paid out of our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes, and will be taxable as ordinary income, although possibly at reduced rates, as discussed below. We cannot guarantee that our current and accumulated earnings and profits will be such that all distributions paid with respect to the Series B Preferred or our common stock will qualify as dividends for U.S. federal income tax purposes. Our accumulated earnings and profits and our current earnings and profits in future years will depend in significant part on our future profits or losses, which we cannot accurately predict. To the extent that the amount of any distribution paid on the Series B Preferred or our common stock exceeds our current and accumulated earnings and profits attributable to that share of the Series B Preferred or our common stock, the distribution will be treated first as a tax-free return of capital and will be applied against and will reduce the U.S. holder’s adjusted tax basis (but not below zero) in that share of the Series B Preferred or our common stock. This reduction in basis will increase any gain, or reduce any loss realized by the U.S. holder on the subsequent sale, redemption or other disposition of the Series B Preferred or our common stock. The amount of any such distribution in excess of the U.S. holder’s adjusted tax basis will be taxed as capital gain. For purposes of the remainder of the discussion under this heading, it is assumed that distributions paid on the Series B Preferred or our common stock will constitute dividends for U.S. federal income tax purposes.

If a U.S. holder is a corporation, dividends that are received by it will generally be eligible for a 70% dividends received deduction under the Code. However, the Code disallows this dividends received deduction in its entirety if the Series B Preferred or our common stock with respect to which the dividend is paid is held by such U.S. holder for less than 46 days during the 91-day period beginning on the date which is 45 days before the date on which the Series B Preferred or our common stock becomes ex-dividend with respect to such dividend. (A 91-day minimum holding period applies to any dividends on the Series B Preferred that are attributable to periods in excess of 366 days.)

Under current law, if a U.S. holder is an individual or other non-corporate holder, dividends received by such U.S. holder generally will be subject to a reduced maximum tax rate of 15% for taxable years beginning before January 1, 2011, after which the rate applicable to dividends is scheduled to return to the tax rate generally applicable to ordinary income. The rate reduction does not apply to dividends received to the extent that U.S. holders elect to treat the dividends as “investment income,” for purposes of the rules relating to the limitation on the deductibility of investment-related interest, which may be offset by investment expense. Furthermore, the rate reduction will also not apply to dividends that are paid to such holders with respect to the Series B Preferred or our common stock that is held by the holder for less than 61 days during the 121-day period beginning on the date which is 60 days before the date on which the Series B Preferred or our common stock become ex-dividend with respect to such dividend. (A 91-day minimum holding period applies to any dividends on the Series B Preferred that are attributable to periods in excess of 366 days.)

In general, for purposes of meeting the holding period requirements for both the dividends received deduction and the reduced maximum tax rate on dividends described above, U.S. holders may not count towards their holding period any period in which they (a) have the option to sell, are under a contractual obligation to sell, or have made (and not closed) a short sale of the Series B Preferred or our common stock, as the case may be, or substantially identical stock or securities, (b) are the grantor of an option to buy the Series B Preferred or our common stock, as the case may be, or substantially identical stock or securities or (c) otherwise have diminished their risk of loss on the Series B Preferred or our common stock, as the case may be, by holding one or more other positions with respect to substantially similar or related property. The U.S. Treasury regulations provide that a taxpayer has diminished its risk of loss on stock by holding a position in substantially similar or related property if the taxpayer is, including, without limitation, the beneficiary of a guarantee, surety agreement or similar arrangement that provides for payments that will substantially offset decreases in the fair market value of the stock. In addition, the Code disallows the dividends received deduction as well as the reduced maximum tax rate on dividends if the recipient of a dividend is obligated to make related payments with respect to positions in substantially similar or related property. This disallowance applies even if the minimum holding period has been met. U.S. holders are advised to consult their own tax advisors regarding the implications of these rules in light of their particular circumstances.

U.S. holders that are corporations should consider the effect of Section 246A of the Code, which reduces the dividends received deduction allowed with respect to “debt-financed portfolio stock.” The Code also imposes a 20% alternative minimum tax on corporations. In some circumstances, the portion of dividends subject to the dividends received deduction will serve to increase a corporation’s minimum tax base for purposes of the determination of the alternative minimum tax. In addition, a corporate U.S. holder may be required to reduce its basis in stock with respect to certain “extraordinary dividends”, as provided under Section 1059 of the Code. U.S. holders should consult their own tax advisors in determining the application of these rules in light of their particular circumstances.

**Sale or Other Disposition.** A sale, exchange, or other disposition of the Series B Preferred or our common stock will generally result in gain or loss equal to the difference between the amount realized upon the disposition (not including any amount attributable to declared and unpaid dividends, which will be taxable as described above to U.S. holders of record who have not previously included such dividends in income) and a U.S. holder’s adjusted tax basis in the Series B Preferred or our common stock, as the case may be. Such gain or loss will be capital gain or loss and will be long-term capital gain or loss if the U.S. holder’s holding period for the Series B Preferred or our common stock, as applicable, exceeds one year. Under current law, if a U.S. holder is an individual or other non-corporate holder, net long-term capital gain realized by such U.S. holder is subject to a reduced maximum tax rate of 15%. For taxable years beginning on or after January 1, 2011, the maximum rate is scheduled to return to the previously effective 20% rate. The deduction of capital losses is subject to limitations.

**Conversion of the Series B Convertible Preferred Stock into Common Stock.** As a general rule, a U.S. holder will not recognize any gain or loss in respect of the receipt of common stock upon the conversion of the Series B Preferred. The adjusted tax basis of common stock received on conversion will equal the adjusted tax basis of the Series B Preferred converted (reduced by the portion of adjusted tax basis allocated to any fractional common stock exchanged for cash, as described below), and the holding period of such common stock received on conversion will generally include the period during which the converted Series B Preferred was held prior to conversion.

Cash received in lieu of a fractional share of our common stock will generally be treated as a payment in a taxable exchange for such fractional share of our common stock, and capital gain or loss will be recognized on the receipt of cash in an amount equal to the difference between the amount of cash received and the amount of adjusted tax basis allocable to the fractional share of our common stock. Any cash received attributable to any declared and unpaid dividends on the Series B Preferred will be treated as described above under “—U.S. Holders—Dividends.”

In the event a U.S. holder's Series B Preferred is converted pursuant to certain transactions, including our consolidation or merger into another person (see "Description of the Series B Convertible Preferred Stock"), the tax treatment of such a conversion will depend upon the facts underlying the particular transaction triggering such a conversion. Each U.S. holder should consult its tax adviser to determine the specific tax treatment of a conversion under such circumstances.

**Adjustment of Conversion Rate.** The conversion rate of the Series B Preferred is subject to adjustment under certain circumstances. U.S. Treasury regulations promulgated under Section 305 of the Code would treat a U.S. holder of the Series B Preferred as having received a constructive distribution includable in such U.S. holder's income in the manner as described above under "—U.S. Holders—Dividends," above, if and to the extent that certain adjustments in the conversion rate increase the proportionate interest of a U.S. holder in our earnings and profits. For example, an increase in the conversion rate to reflect a taxable dividend to holders of common stock will generally give rise to a deemed taxable dividend to the holders of the Series B Preferred to the extent of our current and accumulated earnings and profits. In addition, an adjustment to the conversion rate of the Series B Preferred or a failure to make such an adjustment could potentially give rise to constructive distributions to U.S. holders of our common stock. Thus, under certain circumstances, U.S. holders may recognize income in the event of a constructive distribution even though they may not receive any cash or property. Adjustments to the conversion rate made pursuant to a bona fide reasonable adjustment formula which has the effect of preventing dilution in the interest of the U.S. holders of the Series B Preferred, however, will generally not be considered to result in a constructive dividend distribution.

**Information Reporting and Backup Withholding.** In general, information reporting will apply to dividends in respect of the Series B Preferred or our common stock and the proceeds from the sale, exchange or other disposition of the Series B Preferred or our common stock that are paid to a U.S. holder within the United States (and in certain cases, outside the United States), unless a U.S. holder is an exempt recipient such as a corporation. Backup withholding may apply to such payments if a U.S. holder fails to provide a taxpayer identification number or certification of other exempt status or fails to report in full dividend and interest income.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a U.S. holder's U.S. federal income tax liability provided the required information is furnished to the IRS.

## **Non-U.S. Holders**

**Dividends.** Dividends (including any constructive distributions taxable as dividends) paid to a non-U.S. holder of the Series B Preferred or our common stock generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. However, dividends that are effectively connected with the conduct of a trade or business within the United States by the non-U.S. holder (and, if required by an applicable income tax treaty, are attributable to a United States permanent establishment) are not subject to the withholding tax, provided certain certification and disclosure requirements are satisfied. Instead, such dividends are subject to U.S. federal income tax on a net income basis in the same manner as if the non-U.S. holder were a United States person as defined under the Code. Any such effectively connected dividends received by a foreign corporation may be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A non-U.S. holder of the Series B Preferred or our common stock who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding, as discussed below, for dividends will be required (a) to complete Internal Revenue Service Form W-8BEN (or other applicable form) and certify under penalty of perjury that such holder is not a United States person as defined under the Code and is eligible for treaty benefits or (b) if the Series B Preferred or our common stock is held through certain foreign intermediaries, to satisfy the relevant certification requirements of applicable United States Treasury regulations. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals.

A non-U.S. holder of the Series B Preferred or our common stock eligible for a reduced rate of United States withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the Internal Revenue Service.

**Sale or Other Disposition.** Any gain realized on the disposition of the Series B Preferred or our common stock (including, in the case of conversion, the deemed exchange that gives rise to a payment of cash in lieu of a fractional share of our common stock) generally will not be subject to U.S. federal income tax unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States (and, if required by an applicable income tax treaty, is attributable to a United States permanent establishment of the non-U.S. holder);
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition (or deemed to have been present in the United States for 183 days or more in such taxable year based on a weighted factor of the number of days present in the United States over the past three years), and certain other conditions are met; or
- we are or have been a “United States real property holding corporation” for U.S. federal income tax purposes.

An individual non-U.S. holder described in the first bullet point immediately above will be subject to tax on the net gain derived from the sale under regular graduated U.S. federal income tax rates. An individual non-U.S. holder described in the second bullet point immediately above will be subject to a flat 30% tax on the gain derived from the sale, which may be offset by United States source capital losses, even though the individual is not considered a resident of the United States. If a non-U.S. holder that is a foreign corporation falls under the first bullet point immediately above, it will be subject to tax on its net gain in the same manner as if it were a United States person as defined under the Code and, in addition, may be subject to the branch profits tax equal to 30% of its effectively connected earnings and profits or at such lower rate as may be specified by an applicable income tax treaty.

We believe we are not and do not anticipate becoming a “United States real property holding corporation” for U.S. federal income tax purposes so withholding rules related to such corporations will not be applicable.

**Conversion into Common Stock.** Non-U.S. holders will generally not recognize any gain or loss in respect of the receipt of common stock upon the conversion of the Series B Preferred, except with respect to any cash received in lieu of a fractional share of our common stock that is taxable as described above under “—Non-U.S. Holders—Sale or Other Disposition.”

**Adjustment of Conversion Rate.** As described above under “—U.S. Holders—Adjustment of Conversion Rate”, adjustments in the conversion rate (or failures to adjust the conversion rate) that increase the proportionate interest of a non-U.S. holder in our earning and profits could result in deemed distributions to the non-U.S. holder that are taxed as described under “—Non-U.S. Holders—Dividends.”

## **Federal Estate Tax**

The Series B Preferred and common stock owned or treated as owned by an individual who is not a citizen or resident of the United States (as specially defined for U.S. federal estate tax purposes) at the time of death will be included in the individual’s gross estate for U.S. federal estate tax purposes, unless an applicable estate tax or other treaty provides otherwise and, therefore, may be subject to U.S. federal estate tax.

## Information Reporting and Backup Withholding

We must report annually to the Internal Revenue Service and to each non-U.S. holder the amount of dividends paid to such holder and the tax withheld with respect to such dividends, regardless of whether withholding was required. Copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

A non-U.S. holder will be subject to backup withholding for dividends paid to such holder unless such holder certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that such holder is a United States person as defined under the Code), or such holder otherwise establishes an exemption.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale of the Series B Preferred or our common stock within the United States or conducted through certain United States-related financial intermediaries, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that the beneficial owner is a United States person as defined under the Code), or such owner otherwise establishes an exemption.

Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability provided the required information is furnished to the Internal Revenue Service.

## CERTAIN ERISA CONSIDERATIONS

Each person considering the use of plan assets of a pension, profit-sharing or other employee benefit plan, individual retirement account, Keogh plan or other retirement plan, account or arrangement, or a "*plan*," to acquire or hold the Series B Preferred should consider whether an investment in the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) would be consistent with the documents and instruments governing the plan, and whether the investment would involve a prohibited transaction under Section 406 of the Employee Retirement Income Security Act of 1974, as amended, or "*ERISA*," or Section 4975 of the Code.

Section 406 of ERISA and Section 4975 of the Code prohibit plans subject to Title I of ERISA and/or Section 4975 of the Code including entities such as collective investment funds, partnerships and separate accounts or insurance company pooled separate accounts or insurance company general accounts whose underlying assets include the assets of such plans, or collectively, "*Plans*," from engaging in certain transactions involving "plan assets" with persons who are "parties in interest" under ERISA or "disqualified persons" under the Code, or "*parties in interest*," with respect to the Plan. A violation of these prohibited transaction rules may result in civil penalties or other liabilities under ERISA and/or an excise tax under Section 4975 of the Code for those persons, unless exemptive relief is available under an applicable statutory, regulatory or administrative exemption. Certain plans including those that are governmental plans (as defined in Section 3(32) of ERISA), certain church plans (as defined in Section 3(33) of ERISA) and foreign plans (as described in Section 4(b)(4) of ERISA) are not subject to the requirements of ERISA or Section 4975 of the Code but may be subject to similar provisions under applicable federal, state, local, foreign or other regulations, rules or laws, or "Similar Laws."

The acquisition or holding of the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) by a Plan with respect to which we or certain of our affiliates is or becomes a party in interest may constitute or result in prohibited transactions under ERISA or Section 4975 of the Code, unless the Series B Preferred (or such common stock) is acquired or held pursuant to and in accordance with an applicable exemption.

Accordingly, the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) may not be purchased or held by any Plan or any person investing “plan assets” of any Plan, unless such purchase or holding is eligible for the exemptive relief available under a Prohibited Transaction Class Exemption, or “PTCE,” such as PTCE 96-23, PTCE 95-60, PTCE 91-38, PTCE 90-1 or PTCE 84-14 issued by the U.S. Department of Labor or there is some other basis on which the purchase or holding of the Series B Preferred (or such common stock) is not prohibited, such as the exemption under Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code, or the “*Service Provider Exemption*,” for certain transactions with non-fiduciary service providers for transactions that are for adequate consideration. Each purchaser or holder of the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) or any interest therein, and each person making the decision to purchase or hold the Series B Preferred (or such common stock) on behalf of any such purchaser or holder will be deemed to have represented and warranted in both its individual capacity and its representative capacity (if any), that on each day from the date on which the purchaser or holder acquires its interest in the Series B Preferred (or the common stock issuable upon conversion of the Series B Preferred) to the date on which the purchaser disposes of its interest in the Series B Preferred (or such common stock), that such purchaser and holder, by its purchase or holding of the Series B Preferred (or such common stock) or any interest therein that (a) its purchase and holding of the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) is not made on behalf of or with “plan assets” of any Plan, or (b) if its purchase and holding of the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) is made on behalf of or with “plan assets” of a Plan, then (i) its purchase and holding of the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) will not result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code and (ii) neither Reed’s, Inc. nor any of our affiliates is acting as a fiduciary (within the meaning of Section 3(21)) of ERISA in connection with the purchase or holding of the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) and has not provided any advice that has formed or may form a basis for any investment decision concerning the purchase or holding of the Series B Preferred. Each purchaser and holder of the Series B Preferred (and the common stock issuable upon conversion of the Series B Preferred) or any interest therein on behalf of any governmental plan will be deemed to have represented and warranted by its purchase or holding of the Series B Preferred or any interest therein that such purchase and holding does not violate any applicable Similar Laws or rules.

Due to the complexity of these rules and the penalties that may be imposed upon persons involved in nonexempt prohibited transactions, it is important that fiduciaries or other persons considering purchasing the Series B Preferred on behalf of or with “plan assets” of any plan or plan asset entity consult with their counsel regarding the availability of exemptive relief under any of the PTCEs listed above or any other applicable exemption, or the potential consequences of any purchase or holding under similar laws, as applicable.

#### **MATERIAL CHANGES**

None.

#### **INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

We incorporate by reference the filed documents listed below, except as superseded, supplemented or modified by this prospectus, and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”):

- (a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, as filed March 27, 2009;

- (b) Our Quarterly Report on Form 10Q for the quarterly period ended March 31, 2009, filed May 13, 2009;
- (c) Our Current Reports on Form 8-K filed with the SEC January 6, 2009, January 26, 2009, May 5, 2009 and June 22, 2009;
- (d) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), since the end of the fiscal year covered by the annual report referred to in paragraph (a) above; and
- (e) The description of our capital stock that is contained in our Registration Statement on Form S-1 (File No.), as filed November 20, 2008.

In addition, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14, and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such earlier statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

We will provide to each person, including any beneficial owner, to whom a prospectus is delivered a copy of any or all of the information that has been incorporated by reference herein without charge by written or oral request directed to Reed's, Inc., 13000 South Spring Street, Los Angeles, California 90061, Attention: Christopher J. Reed or (310) 217-9400.

You should rely only on the information incorporated by reference or provided in this prospectus or any prospectus supplement. We have not authorized anyone else to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front of those documents.

#### **DISCLOSURE OF COMMISSION POSITION ON INDEMNIFICATION FOR SECURITIES ACT LIABILITIES**

Section 145 of the Delaware General Corporation Law (the "DGCL"), as the same exists or may hereafter be amended, provides that a Delaware corporation may indemnify any persons who were, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, were or are threatened to be made, a party to any

threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests, provided that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer, director, employee, or agent is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such officer or director has actually and reasonably incurred.

Section 145 of the DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145 of the DGCL.

Our amended certificate of incorporation provides that, to the fullest extent permitted by Delaware law, as it may be amended from time to time, none of our directors will be personally liable to us or our stockholders for monetary damages resulting from a breach of fiduciary duty as a director. Our amended certificate of incorporation also provides discretionary indemnification for the benefit of our directors, officers, and employees, to the fullest extent permitted by Delaware law, as it may be amended from time to time. Pursuant to our bylaws, we are required to indemnify our directors, officers, employees and agents, and we have the discretion to advance his or her related expenses, to the fullest extent permitted by law.

We do currently provide liability insurance coverage for our directors and officers.

These indemnification provisions may be sufficiently broad to permit indemnification of our officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors or officers, or persons controlling us, pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment of expenses incurred or paid by a director, officer or controlling person in a successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to the court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

#### **WHERE YOU CAN FIND ADDITIONAL INFORMATION**

We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the shares of Series B Preferred offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information about us and the common stock offered hereby, reference is made to the registration statement and the exhibits and schedules filed therewith. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement.

A copy of the registration statement and the exhibits and schedules filed therewith may be inspected without charge at the public reference room maintained by the SEC, located at 100 F Street, N.E., Room 1580, Washington, D.C. 20549, and copies of all or any part of the registration statement may be obtained from such offices upon the payment of the fees prescribed by the SEC. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. We also file annual, quarterly and current reports, proxy statements and other information with the SEC. The SEC also maintains an Internet web site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the site is [www.sec.gov](http://www.sec.gov).

No dealer, salesperson or any other person is authorized to give any information or make any representations in connection with this offering other than those contained in this prospectus and, if given or made, the information or representations must not be relied upon as having been authorized by us. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any security other than the securities offered by this prospectus, or an offer to sell or a solicitation of an offer to buy any securities by anyone in any jurisdiction in which the offer or solicitation is not authorized or is unlawful.



**10,000,000 Transferable Rights to Subscribe for up to 300,000 Shares of  
Series B Convertible Preferred Stock at \$10.00 per Share**

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**PROSPECTUS**

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*Dealer-Manager*

**SOURCE CAPITAL GROUP, INC.**

**June , 2009**

**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the expenses payable by us in connection with this offering of securities described in this registration statement. All amounts shown are estimates, except for the SEC and FINRA registration fee. The Registrant will bear all expenses shown below.

SEC filing fee	\$ 558
FINRA filing fee	\$ 800
Accounting fees and expenses	\$ 10,000
Dealer-manager fees	\$ 220,000
Legal fees and expenses	\$ 40,000
Printing and engraving expenses	\$ 15,000
Other (including subscription and information agent fees)	\$ 40,000
Total	<u>\$ 326,358</u>

(1) Assumes all of the 300,000 shares of Series B Preferred being registered are sold.

**Item 15. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law (the "DGCL"), as the same exists or may hereafter be amended, provides that a Delaware corporation may indemnify any persons who were, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, were or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests, provided that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer, director, employee, or agent is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such officer or director has actually and reasonably incurred.

Section 145 of the DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145 of the DGCL.

Our amended certificate of incorporation provides that, to the fullest extent permitted by Delaware law, as it may be amended from time to time, none of our directors will be personally liable to us or our stockholders for monetary damages resulting from a breach of fiduciary duty as a director. Our amended certificate of incorporation also provides discretionary indemnification for the benefit of our directors, officers, and employees, to the fullest extent permitted by Delaware law, as it may be amended from time to time. Pursuant to our bylaws, we are required to indemnify our directors, officers, employees and agents, and we have the discretion to advance his or her related expenses, to the fullest extent permitted by law.

We do currently provide liability insurance coverage for our directors and officers.

These indemnification provisions may be sufficiently broad to permit indemnification of our officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors or officers, or persons controlling us, pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

In the event that a claim for indemnification against such liabilities (other than the payment of expenses incurred or paid by a director, officer or controlling person in a successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to the court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**Item 16. Exhibits**

See the Exhibit Index which follows the signature page of this Registration Statement on Form S-3, which is incorporated herein by reference.

**Item 17. Undertakings**

The undersigned registrant hereby undertakes that:

(a) The undersigned Registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement: (i) to include any prospectus required by Section 10(a)(3) of the Securities Act; (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high

end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; *provided, however*, that paragraphs (i), (ii) and (iii) do not apply if the Registration Statement is on Form S-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement;

(2) that, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

(3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

(4) that, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(A) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; and

(5) that, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of an undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) The undersigned registrant hereby undertakes that: (i) for purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of the registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of the registration statement as of the time it was declared effective; and (ii) for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. . .

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described under Item 15 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

## SIGNATURES

In accordance with the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and authorized this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Los Angeles, State of California, on June 23, 2009.

### REED'S, INC.

By: /s/ Christopher J. Reed

Christopher J. Reed  
Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Christopher J. Reed his/her true and lawful attorney-in-fact and agent with full power of substitution and re-substitution, for him/her and in his/her name, place and stead, in any and all capacities to sign any or all amendments (including, without limitation, post-effective amendments) to this Registration Statement, any related Registration Statement filed pursuant to Rule 462(b) under the Securities Act of 1933 and any or all pre- or post-effective amendments thereto, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming that said attorney-in-fact and agent, or any substitute or substitutes for him, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates stated.

In accordance with the requirements of the Securities Act of 1933, as amended, this Registration Statement was signed by the following persons in the capacities and on the dates stated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Christopher J. Reed</u> Christopher J. Reed	Chief Executive Officer, Chairman of the board of directors (Principal Executive Officer)	June 23, 2009
<u>/s/ James Linesch</u> James Linesch	Chief Financial Officer (Principal Accounting Officer)	June 23, 2009
<u>/s/ Judy Holloway Reed</u> Judy Holloway Reed	Director	June 23, 2009
<u>/s/ Mark Harris</u> Mark Harris	Director	June 23, 2009
<u>/s/ Daniel S.J. Muffoletto</u> Daniel S.J. Muffoletto	Director	June 23, 2009
<u>/s/ Michael Fischman</u> Michael Fischman	Director	June 23, 2009

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## EXHIBIT INDEX

- 1.1 Form of Dealer-Manager Agreement by and between Reed's, Inc. and Source Capital Group, Inc.\*
  - 3.1 Certificate of Incorporation of Reed's, Inc. as filed September 7, 2001 (Incorporated by reference to Exhibit 3.1 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 3.2 Certificate of Amendment of Certificate of Incorporation of Reed's, Inc. as filed September 27, 2004 (Incorporated by reference to Exhibit 3.2 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 3.3 Certificate of Amendment of Certificate of Incorporation of Reed's, Inc. as filed December 18, 2007 (Incorporated by reference to Exhibit 3.3 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 3.4 Certificate of Designations, Preferences and Rights of Series A Preferred Stock of Reed's, Inc. as filed October 12, 2004 (Incorporated by reference to Exhibit 3.3 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 3.5 Certificate of Correction to Certificate of Designations as filed November 10, 2004 (Incorporated by reference to Exhibit 3.4 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 3.6 Bylaws of Reed's Inc., as amended (Incorporated by reference to Exhibit 3.5 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 3.7 Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock \*
  - 4.1 Form of common stock certificate (Incorporated by reference to Exhibit 4.1 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 4.2 Form of Series A Convertible Preferred Stock certificate (Incorporated by reference to Exhibit 4.2 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 4.3 Form of Subscription Rights Certificate \*
  - 4.4 Form of Notice to Stockholders who are Record Holders\*.
  - 4.5 Form of Notice to Stockholders who are Acting as Nominees\*
  - 4.6 Form of Notice to Clients of Stockholders who are Acting as Nominees\*
  - 4.7 Form of Beneficial Owner Election Form\*
  - 4.8 Preliminary Subscription Agreement\*
  - 4.9 Acknowledgment of Subscription\*
  - 4.10 Form of Investor Warrant+
  - 5.1 Legal Opinion of Qashu & Schoenthaler LLP+
  - 10.1 Brewing Agreement between Reed's, Inc. and The Lion Brewery, Inc. dated May 15, 2001 (Incorporated by reference to Exhibit 10.2 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 10.2 Note in favor of the U.S. Small Business Administration dated December 11, 2000 (Incorporated by reference to Exhibit 10.3 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 10.3 Note in favor of the U.S. Small Business Administration dated December 11, 2000 (Incorporated by reference to Exhibit 10.4 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 10.4 Loan Agreement between Reed's Inc. and California United Bank dated November 29, 2006 (Incorporated by reference to Exhibit 10.5 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-146012))
  - 10.5 Brewing Agreement between Reed's Inc. and The Lion Brewery, Inc. dated November 1, 2008 (Incorporated by reference to Exhibit 10.5 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
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- 10.6 Employment Agreement between Reed's, Inc. and David M. Kane dated September 18, 2007 (Incorporated by reference to Exhibit 10.6 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.7 Employment Agreement between Reed's, Inc. and Rory Ahearn dated April 7, 2007 (Incorporated by reference to Exhibit 10.7 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.8 Employment Agreement between Reed's, Inc. and Neal Cohane dated August 1, 2007 (Incorporated by reference to Exhibit 10.8 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.9 Employment Agreement between Reed's, Inc. and Thierry Foucaut dated May 5, 2007 (Incorporated by reference to Exhibit 10.9 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.10 Employment Agreement between Reed's, Inc. and James Linesch dated December 29, 2008 (Incorporated by reference to Exhibit 10.10 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.11 Employment Agreement between Reed's, Inc. and Mark Reed dated August 7, 2007 (Incorporated by reference to Exhibit 10.11 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.12 Agreement to Assume Repurchase Obligations between Reed's, Inc. and Mark Reed and Bob Reed, dated June 5, 2006 (Incorporated by reference to Exhibit 10.19 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. File No. 333-135186))
  - 10.13 Promissory Note in favor of Lehman Brothers Bank, FSB dated February 22, 2008 (Incorporated by reference to Exhibit 10.13 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.14 Loan and Security Agreement between Reed's, Inc. and Business Alliance Capital Corp. dated June 3, 2005 (Incorporated by reference to Exhibit 10.20 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. File No. 333-135186))
  - 10.15 Loan and Security Agreement between Reed's Inc. and First Capital Western Region LLC dated May 30, 2008 (Incorporated by reference to Exhibit 10.1 to Reed's, Inc.'s Current Report on Form 8K dated July 16, 2008)
  - 10.16 Amendment Number One to Loan and Security Agreement between Reed's Inc. and First Capital Western Region LLC dated June 16, 2008 (Incorporated by reference to Exhibit 10.1 to Reed's, Inc.'s Current Report on Form 8K dated July 23, 2008)
  - 10.17 Amendment Number Two to Loan and Security Agreement between Reed's Inc. and First Capital Western Region LLC dated June 16, 2008 (Incorporated by reference to Exhibit 10.17 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.18 Amendment Number Three to Loan and Security Agreement between Reed's Inc. and First Capital Western Region LLC dated September 24, 2008 (Incorporated by reference to Exhibit 10.18 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.19 Waiver to Loan and Security Agreement dated January 5, 2009 (Incorporated by reference to Exhibit 10.19 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
  - 10.20 2001 Stock Option Plan (Incorporated by reference to Exhibit 4.3 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-120451))
  - 10.21 Reed's Inc. Master Brokerage Agreement between Reed's, Inc. and Reed's Brokerage, Inc. dated May 1, 2008 (Incorporated by reference to Exhibit 10.21 to Reed's, Inc.'s Registration Statement on Form S-1 (File No. 333-156908))
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- 10.22 2007 Stock Option Plan (Incorporated by reference to Exhibit 10.24 to Reed's, Inc.'s Annual Report on Form 10K filed March 27, 2009)
- 10.23 2009 Consultant Stock Plan (Incorporated by reference to Exhibit 4.1 to Reed's, Inc.'s Registration Statement on Form S-8 (File No. 333-157359))
- 10.24 Amendment Number Four to Loan and Security Agreement between Reed's, Inc. and First Capital Western Region LLC dated March 27, 2009 (Incorporated by reference to Exhibit 10.24 to Reed's, Inc.'s Annual Report on Form 10K filed March 27, 2009)
- 10.25 Amendment Number Four to Loan and Security Agreement between Reed's, Inc. and First Capital Western Region LLC dated March 27, 2009
- 10.26 Standard Offer, Agreement, and Escrow Instructions for Purchase of Real Estate dated April 23, 2009, as amended.+
- 10.27 Standard Industrial Commercial Lease Agreement dated May 7, 2009, as amended.+
- 14.1 Code of Ethics (Incorporated by reference to Exhibit 14.1 to Reed's, Inc.'s Registration Statement on Form SB-2 (File No. 333-157359))
- 21 Subsidiaries of Reed's, Inc. (Incorporated by reference to Exhibit 21.1 to Reed's, Inc.'s Annual Report on Form 10KSB for the period ended December 31, 2007)
- 23.1 Consent of Weinberg & Co., P.A.\*
- 23.2 Consent of Qashu & Schoenthaler LLP. (contained in Exhibit 5.1)

\* Filed herewith

+ To be filed by amendment

REED'S, INC.

DEALER-MANAGER AGREEMENT

June \_\_\_\_, 2009

Source Capital Group, Inc.  
As Dealer-Manager,  
276 Post Road West  
Westport, CT 06880

Ladies and Gentlemen:

The following will confirm our agreement relating to the proposed rights offering (the "Rights Offering") to be undertaken by Reed's, Inc., a Delaware corporation (the "Company"), pursuant to which the Company will distribute to holders of record of its common stock, par value \$0.0001 per share (the "Common Stock"), subscription rights (the "Rights") as set forth in the Company's S-1 Rights Offering first filed with the Securities and Exchange Commission (the "Commission") on January 23, 2009, and as amended on Form S-3 on May 4, 2009 to subscribe for and purchase shares of the Company's Series B Convertible Preferred Stock (the "Rights Shares"), at a subscription price equal to \$10.00 per Right in cash (the "Subscription Price").

1. The Rights Offering.

(a) The Company proposes to undertake the Rights Offering pursuant to which each holder of Common Stock shall receive one Right for each share of Common Stock held of record at the close of business on \_\_\_\_\_ (the "Record Date"). Holders of Rights will be entitled to subscribe for and purchase, at the Subscription Price, one share of Series B Preferred for every 66.7 Rights granted to you on the Record Date (the "Basic Subscription Right").

(b) The Rights are expected to be listed on the Nasdaq Stock Market or quoted on the OTC Bulletin Board, and shall be transferable in accordance with, applicable state "blue sky" laws, rules and regulations. The Rights Shares are expected to be quoted on the OTC Bulletin Board and shall be transferable in accordance with, applicable state "blue sky" laws, rules and regulations.

(c) Any holder of Rights who fully exercises all Basic Subscription Rights issued to such holder is entitled to subscribe for Rights Shares which were not otherwise subscribed for by others pursuant to their Basic Subscription Rights (the "Over Subscription Right"). The Over-Subscription Right shall allow a holder of a Right to subscribe for an additional amount equal to up to 400% of the Rights Shares for which such holder was otherwise entitled to subscribe. Rights Shares acquired pursuant to the Over-Subscription Right are subject to allotment, as more fully discussed in the Prospectus (as defined herein).

(d) The Rights will expire at 5:00 p.m., New York City time, on \_\_\_\_\_, 200\_\_ (the “Expiration Date”). The Company shall have the right to extend the Expiration Date for up to an additional 30 trading days in its sole discretion.

(e) All funds from the exercise of Basic Subscription Rights and Over-Subscription Rights will be deposited with Continental Stock Transfer & Trust Company, as the subscription agent (“Continental” or the “Subscription Agent”) and held in a segregated account with the Subscription Agent pending a final determination of the number of Rights Shares to be issued pursuant to the exercise of Basic Subscription Rights and Over-Subscription Rights. As soon as is practicable, the Company shall conduct a closing of the Rights Offering (a “Closing”). In no event will the Company raise more than \$1,500,000 in this Rights Offering, unless such maximum offering amount is waived by the Company, in its sole discretion.

2. Appointment as Dealer-Manager; Role of Dealer-Manager. The Company hereby engages Source Capital Group, Inc. (“Source”) as the sole exclusive dealer-manager (the “Dealer-Manager”) in connection with the Rights Offering, and authorizes the Dealer-Manager to act as such on its behalf in connection with the Rights Offering, in accordance with this Dealer-Manager Agreement (this “Agreement”). During the Engagement Period (as defined in the engagement letter agreement entered into between the Company and the Dealer-Manager, dated May 13, 2009 (the “Engagement Letter”)), the Company will not solicit, negotiate with or enter into any agreement with any other placement agent, financial advisor, dealer manager, brokers, dealers or underwriters or any other person or entity in connection with the Rights Offering. On the basis of the representations and warranties and agreements of the Company contained in this Agreement and subject to and in accordance with the terms and conditions hereof, the Dealer-Manager agrees that as Dealer-Manager it will, in accordance with its customary practice and to the extent requested by the Company, use its commercially reasonable efforts to (a) advise and assist the Company in soliciting the exercise of the Rights held by Rights Holders for subscriptions for Rights Shares, (b) advise and assist the Company in connection with the solicitation of offers to purchase the Rights that Rights Holders desire to transfer, and (c) provide the Advisory Services (defined below) in connection with the Rights Offering. The term “Advisory Services” means (i) advising on pricing, and other terms and conditions of the Rights Offering, including transferability and oversubscription rights and limits, (ii) providing guidance on general market conditions and their impact on the Rights Offering, and (iii) assisting the Company in drafting a presentation that may be used to market the Rights Offering to existing and potential investors. For the avoidance of doubt and notwithstanding anything that may be to the contrary in this Agreement, the Company and the Dealer-Manager hereby agree that the Dealer-Manager will not underwrite the Rights Offering, the Dealer-Manager has no obligation to act, and will not act, in any capacity as an underwriter in connection with the Rights Offering and the Dealer-Manager has no obligation to purchase or procure purchases of the Rights Shares offered in connection with the Rights Offering. The Company agrees that it will not hold the Dealer-Manager liable or responsible for the failure of the Rights Offering in the event that the Rights Offering is not successfully consummated for any reason.

3. No Liability for Acts of Brokers, Dealers, Banks and Trust Companies. The Dealer-Manager shall not be subject to any liability to the Company or any of the Company’s Subsidiaries (as defined below) or “affiliates” (“Affiliates”, as such term is defined in Rule 144 under the Securities Act of 1933, as amended (the “Securities Act”)) for any act or

omission on the part of any broker or dealer in securities (other than the Dealer-Manager) or any bank or trust company or any other management, shareholders, creditors or any other natural person, partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other entity or organization (each, a “Person”), and the Dealer-Manager shall not be liable for its own acts or omissions in performing its obligations as advisor or Dealer-Manager hereunder or otherwise in connection with the Rights Offering or the related transactions, except for any losses, claims, damages, liabilities and expenses determined in a final judgment by a court of competent jurisdiction to have resulted primarily from any such acts or omissions undertaken or omitted to be taken by the Dealer-Manager through its gross negligence, bad faith or willful misconduct. In soliciting or obtaining exercises of Rights, the Dealer-Manager shall not be deemed to be acting as the agent of the Company or as the agent of any broker, dealer, bank or trust company, and no broker, dealer, bank or trust company shall be deemed to be acting as the Dealer-Manager’s agent or as the agent of the Company. As used herein, the term “Subsidiary” means a Subsidiary of the Company as defined in Rule 405 of the Securities Act. Unless the context specifically requires otherwise, the term “Company” as used in this Agreement means the Company and its Subsidiaries collectively on a consolidated basis.

4. The Offer Documents.

(a) There will be used in connection with the Rights Offering certain materials in addition to the Registration Statement, any Preliminary Prospectus or the Prospectus (each as defined herein), including: (i) all exhibits to the Registration Statement which pertain to the conduct of the Rights Offering and (ii) any soliciting materials relating to the Rights Offering approved by the Company (collectively with the Registration Statement, any Preliminary Prospectus and the Prospectus, the “Offer Documents”). The Dealer-Manager shall be given an opportunity to review and comment upon the Offer Documents.

(b) The Company agrees to furnish the Dealer-Manager with as many copies as it may reasonably request of the final forms of the Offer Documents and the Dealer-Manager is authorized to use copies of the Offer Documents in connection with its acting as Dealer-Manager. The Dealer-Manager hereby agrees that it will not disseminate any written material for or in connection with the solicitation of exercises of Rights pursuant to the Rights Offering other than the Offer Documents.

(c) The Company represents and agrees that no solicitation material, other than the Offer Documents and the documents to be filed therewith as exhibits thereto (each in the form of which has been approved by the Dealer-Manager), will be used in connection with the Rights Offering by or on behalf of the Company without the prior approval of the Dealer-Manager, which approval will not be unreasonably withheld. In the event that the Company uses or permits the use of any such solicitation material in connection with the Rights Offering, then the Dealer-Manager shall be entitled to withdraw as Dealer-Manager in connection with the Rights Offering and the related transactions without any liability or penalty to the Dealer-Manager or any other Person identified in Section 11 hereof as an “indemnified party,” and the Dealer-Manager shall be entitled to receive the payment of all fees and expenses payable under this Agreement or the Engagement Letter which have accrued to the date of such withdrawal or which otherwise thereafter become payable.

5. Representations and Warranties. The Company represents and warrants to the Dealer-Manager that:

(a) The Registration Statement on Form S-1, and as amended on Form S-3 (Registration No. 333-156908), with respect to the Rights and the Rights Shares has: (i) been prepared by the Company in conformity with, in all material respects and the requirements of the Securities Act, (ii) been filed with the Commission under the Securities Act and (iii) become effective under the Securities Act. Copies of such Registration Statement as amended to date have been delivered or made available by the Company to the Dealer-Manager. For purposes of this Agreement, "Effective Time" means the date and the time as of which such registration statement, or the most recent post-effective amendment thereto, if any, was declared effective by the Commission; "Effective Date" means the date of the Effective Time; "Preliminary Prospectus" means each prospectus included in such registration statement, or amendments thereof, before it becomes effective under the Securities Act and any prospectus filed with the Commission by the Company with the consent of the Dealer-Manager pursuant to Rule 424(a) of the Securities Act; "Registration Statement" means such Registration Statement, as amended at the Effective Time, including any documents which are exhibits thereto; and "Prospectus" means such final prospectus, as first filed with the Commission pursuant to paragraph (1) or (4) of Rule 424(b) of the Securities Act. The Commission has not issued any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus. All references in this Agreement to the Registration Statement, a Preliminary Prospectus, and the Prospectus, or any amendments or supplements to any of the foregoing shall be deemed to include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR"). The Prospectus delivered to the Dealer-Manager for use in connection with the Rights Offering will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T promulgated by the Commission.

(b) The Registration Statement (together with all exhibits filed as part of the Registration Statement) conforms, and any Preliminary Prospectus and the Prospectus and any further amendments or supplements to the Registration Statement conforms or will conform, when they are filed with or become effective by the Commission, as the case may be, in each case, in all material respects to the requirements of the Securities Act and collectively do not and will not, as of the applicable Effective Date (as to the Registration Statement and any amendment thereto) and as of the applicable filing date (as to the Prospectus and any amendment or supplement thereto) contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein (with respect to the Prospectus, in the light of the circumstances under which they were made) not misleading; provided that no representation or warranty is made by the Company as to information contained in or omitted from the Registration Statement or the Prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Dealer-Manager specifically for inclusion therein, it being acknowledged and agreed that such information provided by or on behalf of the Dealer-Manager consists solely and exclusively of disclosure of the name of the Dealer-Manager acting in its capacity as dealer-manager for the Rights Offering contained in the Prospectus (collectively, the "Dealer-Manager Information") under appropriate headings and in its final form as approved by the Dealer-Manager and its counsel.

(c) There are no contracts, agreements, plans or other documents which are required to be described in the Prospectus or filed as exhibits to the Registration Statement by the Securities Act which have not been described in the Prospectus or filed as exhibits to the Registration Statement or referred to in, or incorporated by reference into, the exhibit table of the Registration Statement as permitted by the Securities Act.

(d) The Company and each of its Subsidiaries have been duly incorporated and are validly existing as corporations in good standing under the laws of their respective jurisdictions of incorporation, are duly qualified to do business and are in good standing as foreign corporations in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the absence of such power or authority (either individually and in the aggregate) could not reasonably be expected to have a material adverse effect on: (i) the business, condition (financial or otherwise), results of operations, shareholders' equity, properties or prospects (as such prospects are disclosed or described in the Prospectus) of the Company or its Subsidiaries; (ii) the long-term debt or capital stock of the Company or its Subsidiaries; or (iii) the Rights Offering or consummation of any of the other transactions contemplated by this Agreement, the Registration Statement or the Prospectus (any such effect being a "Material Adverse Effect").

(e) This Agreement has been duly authorized, executed and delivered by the Company and, assuming the due authorization, execution and delivery by the Dealer-Manager, constitutes the valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally and by general principles of equity.

(f) Neither the Company nor any of its Subsidiaries: (i) is in violation of its charter or by-laws, (ii) in default under or in breach of, and no event has occurred which, with notice or lapse of time or both, would constitute a default or breach under or result in the creation or imposition of any lien, charge, mortgage, pledge, security interest, claim, equity, trust or other encumbrance, preferential arrangement, defect or restriction of any kind whatsoever (each, a "Lien") upon any of their property or assets pursuant to, any material contract, agreement, indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject or (iii) is in violation in any respect of any law, rule, regulation, ordinance, directive, judgment, decree or order, foreign and domestic, to which it or its properties or assets may be subject or has failed to obtain any material license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its properties or assets or to the conduct of its business, except, in the case of clauses (ii) and (iii) above, any violation, default or failure to possess the same that would not have a Material Adverse Effect.

(g) Prior to or on the date hereof: (i) the Company and Continental have or will have entered into a subscription agency agreement (the "Subscription Agency Agreement") if required by the Subscription Agent and (ii) the Company and the MacKenzie Partners, Inc. (the "Information Agent") have or will have entered into an information agency agreement (the "Information Agency Agreement") if required by the Information Agent. When executed by the Company, if applicable, each of the Subscription Agency Agreement and the Information Agency Agreement will have been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by Continental or the Information Agent, as the case may be, will constitute a valid and legally binding agreement of the Company enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally and by general principles of equity.

(h) The Rights to be issued and distributed by the Company have been duly and validly authorized and, when issued and delivered in accordance with the terms of the Offer Documents, will be duly and validly issued, and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, no holder of the Rights is or will be subject to personal liability by reason of being such a holder, and the Rights conform to the description thereof contained in the Prospectus. The shares of Series B Preferred Stock issuable upon exercise of any Rights have been duly and validly authorized and, when issued and delivered in accordance with the terms of the Rights, will be duly and validly issued, fully paid and non-assessable and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, no holder of the Series B Preferred Stock is or will be subject to personal liability by reason of being such a holder, and the Series B Preferred Stock conforms to the description thereof contained in the Prospectus. The shares of Common Stock issuable upon conversion of any shares of Series B Preferred Stock have been duly and validly authorized and, when issued and delivered in accordance with the terms of the Series B Preferred Stock, will be duly and validly issued, fully paid and non-assessable, no holder of the Common Stock is or will be subject to personal liability by reason of being such a holder, and the Common Stock conforms to the description thereof contained in the Prospectus.

(i) Except as disclosed in the Prospectus with respect to the Company's authorized capitalization, the Rights Shares have been duly and validly authorized and reserved for issuance upon exercise of the Rights and are free of statutory and contractual preemptive rights and are sufficient in number to meet the exercise requirements of the Rights Offering; and Rights Shares, when so issued and delivered against payment therefore in accordance with the terms of the Rights Offering, will be duly and validly issued, fully paid and non-assessable, with no personal liability attaching to the ownership thereof, and will conform to the description thereof contained in the Prospectus.

(j) The Common Stock is quoted on the Nasdaq Capital Market ("NasdaqCM"). The Company has not received an oral or written notification from the NasdaqCM or any court or any other federal, state, local or foreign governmental or regulatory authority having jurisdiction over the Company or any of its Subsidiaries or any of their properties or assets ("Governmental Authority") of any inquiry or investigation or other action that would cause the Common Stock or the Rights Shares to not be quoted on the NasdaqCM.

(k) The Company has an authorized capitalization as set forth under the caption "Capitalization" in the Prospectus, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Company capital stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those accurately described in the Registration Statement. The description of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement accurately and fairly presents in all material respects the information required to be shown with respect to such plans, arrangements, options and rights.

(l) The warrant (the “Dealer-Manager Warrant”) to be issued to the Dealer-Manager as described in Section 6 hereof, the Engagement Letter and in the Prospectus will conform to the description thereof in the Registration Statement and in the Prospectus and, when issued and delivered by the Company in accordance with the Dealer-Manager Warrant, will have been duly authorized and validly issued and will constitute a valid and binding obligation of the Company. The shares of Common Stock issuable upon exercise of the Dealer-Manager Warrant have been duly authorized and reserved for issuance upon exercise of the Dealer-Manager Warrant by all necessary corporate action on the part of the Company and, when issued and delivered and paid for upon such exercise in accordance with the terms of the Dealer-Manager Warrant, will be validly issued, fully paid, nonassessable and free of preemptive rights and will conform to the description thereof in the Prospectus.

(m) The Company and its Subsidiaries own or lease all such assets or properties as are necessary to the conduct of its business as presently operated and as proposed to be operated as described in the Registration and the Prospectus. The Company or its Subsidiaries have good and marketable title in fee simple to all assets or real property and good and marketable title to all personal property owned by them, in each case free and clear of any Lien, except for such Liens as are described in the Registration Statement and the Prospectus. Any assets or real property and buildings held under lease or sublease by the Company or any Subsidiary is held under valid, subsisting and enforceable leases with such exceptions as are not material to, and do not interfere with, the use made and proposed to be made of such property and buildings by the Company or such Subsidiary. Neither the Company nor any Subsidiary has received any notice of any material claim adverse to its ownership of any real or personal property or of any material claim against the continued possession of any real property, whether owned or held under lease or sublease by the Company or any Subsidiary.

(n) The Company and its Subsidiaries have all material consents, approvals, authorizations, orders, registrations, qualifications, licenses, filings and permits of, with and from all judicial, regulatory and other Governmental Authorities and all third parties, foreign and domestic (collectively, with the Licensing Requirements described below, the “Consents”), to own, lease and operate their properties and conduct their businesses as presently being conducted and as disclosed in the Registration Statement and the Prospectus, and each such Consent is valid and in full force and effect. The Company has not received notice of any investigation or proceedings which results in or, if decided adversely to the Company, could reasonably be expected to result in, the revocation of any Consent or reasonably be expected to have a Material Adverse Effect. No Consent contains a materially burdensome restriction not adequately disclosed in the Registration Statement and the Prospectus.

(o) The execution, delivery and performance of this Agreement by the Company, the issuance of the Rights in accordance with the terms of the Offer Documents, the issuance of Rights Shares in accordance with the terms of the Rights Offering, and the consummation by the Company of the transactions contemplated hereby, the Subscription Agency Agreement and the Information Agency Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries or any of its Affiliates is a party or by which the Company or any of its Subsidiaries or its Affiliates is bound or to which any of the properties or assets of the Company or any of its Subsidiaries or its Affiliates is subject, nor will such actions result in any violation of the provisions of the charter or by-laws of the Company or any of its Subsidiaries or any statute or any order, rule or regulation of any Governmental Authority; and except for the registration of the Rights and the Rights Shares under the Securities Act and such consents, approvals, authorizations, registrations or qualifications as may be required under the Exchange Act and applicable state securities laws in connection with the distribution of the Rights and the sale of the Rights Shares by the Company, no consent, approval, authorization or order of, or filing or registration with, any such court or Governmental Authority is required for the execution, delivery and performance of this Agreement by the Company and the consummation by it of the transactions contemplated hereby.

(p) Except as otherwise set forth in the Prospectus, there are no contracts, agreements or understandings between the Company and any Person granting such Person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such Person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act. No holder of any security of the Company has any rights of rescission or similar rights with respect to such securities held by them.

(q) Neither the Company nor any of its Subsidiaries has sustained, since the date of the latest balance sheet included in the Prospectus or after such date and as disclosed in the Prospectus, any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and, since such date or after such date and as disclosed in the Prospectus, there has not been any change in the capital stock or long-term debt of the Company or any of its Subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity, results of operations or prospects (as such prospects are disclosed or described in the Prospectus) of the Company and its Subsidiaries (a "Material Adverse Change"). Since the date of the latest balance sheet presented in the Prospectus, the Company has not incurred or undertaken any liabilities or obligations, whether direct or indirect, liquidated or contingent, matured or unmatured, or entered into any transactions, including any acquisition or disposition of any business or asset, which are material to the Company, except for liabilities, obligations and transactions which are disclosed in the Registration Statement, any Preliminary Prospectus and the Prospectus.

(r) Weinberg & Company, P.A. ("Weinberg"), whose reports relating to the Company are included in the Registration Statement, are independent public accountants as required by the Securities Act, the Exchange Act and the rules and regulations promulgated by the Public Company Accounting Oversight Board (the "PCAOB"). Weinberg, to the best of the Company's knowledge, is duly registered and in good standing with the PCAOB. Weinberg has not, during the periods covered by the financial statements included in the Registration Statement, the Preliminary Prospectus and the Prospectus, provided to the Company any non-audit services, as such term is used in Section 10A(g) of the Exchange Act.

(s) The financial statements, including the notes thereto, and any supporting schedules included in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the financial position as of the dates indicated and the cash flows and results of operations for the periods specified of the Company. Except as otherwise stated in the Registration Statement, any Preliminary Prospectus and the Prospectus, said financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis throughout the periods involved. Any supporting schedules included in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the information required to be stated therein. No other financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement. The other financial and statistical information included in the Registration Statement, any Preliminary Prospectus and the Prospectus present fairly, in all material respects, the information included therein and have been prepared on a basis consistent with that of the financial statements that are included in the Registration Statement, such Preliminary Prospectus and the Prospectus and the books and records of the respective entities presented therein.

(t) There are no pro forma or as adjusted financial statements which are required to be included in the Registration Statement, any Preliminary Prospectus and the Prospectus in accordance with Regulation S-X under the Securities Act which have not been included as so required. The pro forma and/or as adjusted financial information included in the Registration Statement, any Preliminary Prospectus and the Prospectus has been properly compiled and prepared in accordance with the applicable requirements of the Securities Act and include all adjustments necessary to present fairly, in all material respects, in accordance with generally accepted accounting principles the pro forma and as adjusted financial position of the respective entity or entities presented therein at the respective dates indicated and their cash flows and the results of operations for the respective periods specified. The assumptions used in preparing the pro forma and as adjusted financial information included in the Registration Statement, any Preliminary Prospectus and the Prospectus provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein. The related pro forma and pro forma as adjusted adjustments give appropriate effect to those assumptions; and the pro forma and pro forma as adjusted financial information reflect the proper application of those adjustments to the corresponding historical financial statement amounts.

(u) The statistical, industry-related and market-related data included in the Registration Statement, any Preliminary Prospectus and the Prospectus are based on or derived from sources which the Company reasonably believes are reliable and accurate, and such data agree with the sources from which they are derived. All applicable third party consents have been obtained in order for such data to be included in the Registration Statement, any Preliminary Prospectus and the Prospectus.

(v) Except as disclosed in the Registration Statement and the Prospectus, the Company maintains a system of internal accounting and other controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with United States generally accepted accounting principles and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accounting for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(w) The Company's Board of Directors has validly appointed an audit committee, compensation committee and nominating and corporate governance committee whose composition satisfies the requirements of the rules and regulations of the Commission and the Company's Board of Directors and/or audit committee, compensation committee and the nominating corporate governance committee has each adopted a charter as described in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008, and incorporated by reference into the Registration Statement, and such charters are in full force and effect as of the date hereof. Neither the Company's Board of Directors nor the audit committee thereof has been informed, nor is any director of the Company aware, of: (i) except as disclosed in the Registration Statement and the Prospectus, any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(x) The Company is in material compliance with the provisions of the Sarbanes-Oxley Act of 2002, as amended ("Sarbanes Oxley") applicable to the Company, and the rules and regulations promulgated thereunder and related or similar rules and regulations promulgated by any other Governmental Authority or self regulatory entity or agency, except for violations which, singly or in the aggregate, are disclosed in the Prospectus or would not have a Material Adverse Effect.

(y) To the best of the Company's knowledge, no relationship, direct or indirect, exists between or among any of the Company or any Affiliate of the Company, on the one hand, and any director, officer, shareholder, customer or supplier of the Company or any Affiliate of the Company, on the other hand, which is required by the Securities Act or the Exchange Act to be described in the Registration Statement or the Prospectus which is not so described as required. Except as disclosed in the Registration Statement and the Prospectus, there are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of their respective family members. The Company has not, in violation of Sarbanes Oxley, directly or indirectly, including through any Affiliate of the Company (other than as permitted under the Sarbanes Oxley for depository institutions), extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any director or executive officer of the Company.

(z) Except as described in the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its Subsidiaries is a party or of which any property or asset of the Company or any of its Subsidiaries is the subject which, if determined adversely to the Company or any of its Subsidiaries, are reasonably likely to have a Material Adverse Effect; and to the best of the Company's knowledge, except as disclosed in the Prospectus, no such proceedings are threatened or contemplated by Governmental Authorities or threatened by others.

(aa) The Company and its Subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them, except where the failure to make such filings or make such payments, either individually or in the aggregate, could not reasonably be expected to have, a Material Adverse Effect. The Company has made adequate charges, accruals and reserves in its financial statements above in respect of all federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its Subsidiaries has not been finally determined.

(bb) Each of the Company and its Subsidiaries maintains insurance of the types and in the amounts which the Company believes to be reasonable and sufficient for a company of its size operating in the Company's industry, including, but not limited to: (i) directors' and officers' insurance (including insurance covering the Company, its directors and officers for liabilities or losses arising in connection with the Rights Offering, including, without limitation, liabilities or losses arising under the Securities Act, the Exchange Act and applicable foreign securities laws), (ii) insurance covering real and personal property owned or leased against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, (iii) business interruption insurance and (iv) product-related or clinical trial-related insurance. There are no claims by the Company or any of its Subsidiaries under any policy or instrument described in this paragraph as to which any insurance company is denying liability or defending under a reservation of rights clause. All of the insurance policies described in this paragraph are in full force and effect. Neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it will not be able to renew its 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 at a cost that would not have a Material Adverse Effect.

(cc) The Company and its Subsidiaries own or possess or have the right to use on reasonable terms all patents, patent rights, patent applications, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names, service names and other intellectual property (collectively, “Intellectual Property”) necessary to carry on their respective businesses as described in the Prospectus and as proposed to be conducted; and neither the Company nor any of its Subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interests of the Company or any of its Subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, individually or in the aggregate, might result in a Material Adverse Effect. All former and current employees of the Company or any of its Subsidiaries (and, to the Company’s knowledge, all other agents, consultants and contractors of the Company or any of its subsidiaries who contributed to or participated in the conception or development of any Intellectual Property for the Company or any of its Subsidiaries) have executed written contracts or agreements that assign to the Company all rights to any inventions, improvements, discoveries or information relating to the business of the Company and its subsidiaries, including without limitation all Intellectual Property owned, controlled by or in the possession of the Company or any of its subsidiaries. To the knowledge of the Company, there is no unauthorized use, infringement or misappropriation of any of the Intellectual Property by any third party, employee or former employee. Each agreement and instrument (each, a “License Agreement”) pursuant to which any Intellectual Property is licensed to the Company or any of its subsidiaries is in full force and effect, has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company or the applicable subsidiary, as the case may be, enforceable against the Company or such subsidiary in accordance with its terms, except as enforcement thereof may be subject to bankruptcy, insolvency or other similar laws relating to or affecting creditors’ rights generally or by general equitable principles; the Company and its subsidiaries are in compliance with their respective obligations under all License Agreements and, to the knowledge of the Company, all other parties to any of the License Agreements are in compliance with all of their respective obligations thereunder; no event or condition has occurred or exists that gives or would give any party to any License Agreement the right, either immediately or with notice or passage of time or both, to terminate or limit (in whole or in part) any such License Agreement or any rights of the Company or any of its subsidiaries thereunder, to exercise any of such party’s remedies thereunder, or to take any action that would adversely affect any rights of the Company or any of its subsidiaries thereunder or that might have a Material Adverse Effect and the Company is not aware of any facts or circumstances that would result in any of the foregoing or give any party to any License Agreement any such right; and neither the Company nor any of its subsidiaries has received any notice of default, breach or non-compliance under any License Agreement.

(dd) Except as described in any Preliminary Prospectus, the Prospectus and the Registration Statement, the Company: (i) is and at all times has been in full compliance with all statutes, rules, regulations or guidance applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product manufactured, distributed or sold by the Company or any component thereof (such statutes, rules, regulations or guidance, collectively, “Applicable Laws”); (ii) has not received any notice of adverse finding, warning letter, untitled letter or other correspondence or notice from the FDA or any other Governmental Authority alleging or asserting noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws (“Authorizations”); (iii) possesses all Authorizations and such Authorizations are valid and in full force and effect and are not in violation of any term of any such Authorizations; (iv) has not received notice of any claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action from any Governmental Authority or third party alleging that any product operation or activity is in violation of any Applicable Laws or Authorizations and has no knowledge that any such Governmental Authority or third party is considering any such claim, suit, proceeding, hearing, enforcement, audit, investigation, arbitration or other action; (v) has not received notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations and has no knowledge that any such Governmental Authority is considering such action; (vi) has filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete and correct in all material respects on the date filed (or were corrected or supplemented by a subsequent submission), except, in the case of each of clauses (i), (ii) and (iii), for any default, violation or event that would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

(ee) Neither the Company nor, to the Company's knowledge, any of the Company's directors, officers or employees has violated: (i) the Bank Secrecy Act, as amended, (ii) the Money Laundering Control Act of 1986, as amended, (iii) the Foreign Corrupt Practices Act, or (iv) the Uniting and Strengthening of America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, and/or the rules and regulations promulgated under any such law, or any successor law, except for such violations which, singly or in the aggregate, would not have a Material Adverse Effect.

(ff) Neither the Company nor any of its Affiliates has, prior to the date hereof, made any offer or sale of any securities which are required to be "integrated" pursuant to the Securities Act with the offer and sale of the Shares pursuant to the Registration Statement.

(gg) Except as described in the Registration Statement and the Prospectus, there are no claims, payments, arrangements, agreements or understandings relating to the payment of a finder's, consulting or origination fee or other compensation by the Company with respect to the issuance or exercise of the Rights or the sale of the Rights Shares or any other arrangements, agreements or understandings of the Company or, to the Company's knowledge, the Company's officers, directors and employees or Affiliates that may affect the Dealer-Manager's compensation, as determined by the Financial Industry Regulatory Authority, Inc. ("FINRA"). Except as previously disclosed by the Company to the Dealer-Manager in writing, no officer, director, or beneficial owner of 5% or more of any class of the Company's securities (whether debt or equity, registered or unregistered, regardless of the time acquired or the source from which derived) or any other Affiliate is a member or a Person associated, or affiliated with a member of FINRA. No proceeds from the exercise of the Rights will be paid to any FINRA member, or any Persons associated or affiliated with a member of FINRA, except as specifically contemplated herein. Except as previously disclosed by the Company to the Dealer-Manager, no Person to whom securities of the Company have been privately issued within the 180-day period prior to the initial filing date of the Registration Statement has any relationship or affiliation or association with any member of FINRA.

(hh) There are no contracts, agreements or understandings between the Company and any Person that would give rise to a valid claim against the Company or the Dealer-Manager for a brokerage commission, finder's fee or other like payment in connection with the transactions contemplated by this Agreement. Other than the Dealer-Manager, the Company has not employed any brokers, dealers or underwriters in connection with solicitation of exercise of Rights in the Rights Offering, and except provided for in Section 6 and 7 hereof, no other commissions, fees or discounts will be paid by the Company or otherwise in connection with the Rights Offering.

(ii) Neither the Company nor, to the Company's knowledge, any of the Company's officers, directors, employees or agents has at any time during the last five (5) years: (i) made any unlawful contribution to any candidate for foreign office, or failed to disclose fully any contribution in violation of law, or (ii) made any payment to any federal or state governmental officer or official, or other Person charged with similar public or quasi-public duties, other than payments that are not prohibited by the laws of the United States of any jurisdiction thereof.

(jj) The Company has not and will not, directly or indirectly through any officer, director or Affiliate of the Company or through any other Person: (i) taken any action designed to cause or to result in, or that has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the issuance of the Rights or the sale or resale of the Rights Shares, (ii) since the filing of the Registration Statement sold, bid for or purchased, or paid any Person (other than the Dealer-Manager) any compensation for soliciting exercises or purchases of, the Rights or the Rights Shares and (iii) until the later of the expiration of the Rights or the completion of the distribution (within the meaning of Regulation M under the Exchange Act) of the Rights Shares, sell, bid for or purchase, apply or agree to pay to any Person (other than the Dealer-Manager) any compensation for soliciting another to purchase any other securities of the Company (except for the solicitation of the exercises of Rights pursuant to this Agreement). The foregoing shall not apply to the offer, sale, agreement to sell or delivery with respect to: (i) Rights Shares offered and sold upon exercise of the Rights, as described in the Prospectus, or (ii) any shares of Common Stock sold pursuant to the Company's employee benefit plans.

(kk) Each "forward-looking statement" (within the meaning of Section 27A of the Securities Act or Section 21E of the Exchange Act) included in the Registration Statement and the Prospectus has been made or reaffirmed with a reasonable basis and has been disclosed in good faith.

As used in this Agreement, references to matters being "material" with respect to the Company or any matter relating to the Company shall mean a material item, event, change, condition, status or effect related to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, prospects (as such prospects are disclosed or described in any Preliminary Prospectus or the Prospectus), operations or results of operations of the Company and its Subsidiaries, taken as a whole.

As used in this Agreement, the term "knowledge of the Company" (or similar language) shall mean the knowledge of the officers of the Company who are named in the Prospectus, with the assumption that such officers shall have made reasonable and diligent inquiry of the matters presented (with reference to what is customary and prudent for the applicable individuals in connection with the discharge by the applicable individuals of their duties as officers or directors of the Company).

6. Compensation. The Dealer-Manager shall receive the fee as set forth in the Engagement Letter. Nothing in this Agreement shall affect the Dealer-Manager's rights to receive any fees, compensation or reimbursement set forth in the Engagement Letter in accordance with the terms thereof. All payments to be made by the Company pursuant to this Section 6 shall be made at the Closing by wire transfer of immediately available funds and consummation of the subscriptions for Rights Shares pursuant to the exercise of Rights (the "Closing Date").

7. Expenses. In addition to the Dealer-Manager's compensation for services hereunder pursuant to Section 6 hereof, the Company shall pay or cause to be paid:

(a) all expenses (including any taxes) incurred in connection with the Rights Offering and the preparation, issuance, execution, authentication and delivery of the Rights and the Rights Shares;

(b) all fees, expenses and disbursements of the Company's accountants, legal counsel and other third party advisors;

- (c) all reasonable and documented costs and expenses of the Dealer-Manager as set forth in the Engagement Letter;
- (d) all fees and expenses of the Subscription Agent and the Information Agent;
- (e) all fees, expenses and disbursements (including, without limitation, fees and expenses of the Company's accountants and counsel) in connection with the preparation, printing, filing, delivery and shipping of the Registration Statement (including the financial statements therein and all amendments and exhibits thereto), each Preliminary Prospectus, the Prospectus, the other Offer Documents and any amendments or supplements of the foregoing and any printing, delivery and shipping of this Agreement, the costs of distributing the terms of any agreement relating to any organization of soliciting dealers, if any, to the members thereof by mail, fax or other means of communications;
- (f) all fees, expenses and disbursements relating to the registration or qualification of the Rights and the Rights Shares under the "blue sky" securities laws of any states or other jurisdictions and all fees and expenses associated with the preparation of the preliminary and final forms of Blue Sky Memoranda;
- (g) all filing fees of the Commission;
- (h) all filing fees relating to the review of the Rights Offering by FINRA;
- (i) any applicable listing or other fees;
- (j) the cost of printing certificates representing the Rights and the Rights Shares;
- (k) all advertising charges pertaining to the Rights Offering;
- (l) the cost and charges of the Company's transfer agent(s) or registrar(s); and
- (m) all other costs and expenses incident to the performance of its obligations hereunder for which provision is not otherwise made in this Section.
- (n) All payments to be made by the Company pursuant to this Section 7 shall be made promptly after the termination or expiration of the Rights Offering or, if later, promptly after the related fees, expenses or charges accrue and an invoice therefor is sent by the Dealer-Manager. The Company shall perform its obligations set forth in this Section 7 whether or not the Rights Offering commences or any Rights are exercised pursuant to the Rights Offering.

8. Shareholder Lists; Subscription Agent; Information Agent.

(a) The Company will cause the Dealer-Manager to be provided with any cards or lists showing the names and addresses of, and the number of shares of Common Stock held by, the holders of shares of Common Stock as of a recent date and will use its best efforts to cause the Dealer-Manager to be advised from time to time during the period, as the Dealer-Manager shall request, of the Rights Offering as to any transfers of record of shares of Common Stock.

(b) The Company (i) has arranged for Continental Stock Transfer & Trust Company to serve as subscription agent in connection with the Rights Offering (the “Subscription Agent”), (ii) will arrange for the Subscription Agent to advise the Dealer-Manager regularly as to such matters as the Dealer-Manager may reasonably request, including the number of Rights that have been exercised, and (iii) will arrange for the Subscription Agent to be responsible for receiving subscription funds paid.

(c) The Company has arranged for MacKenzie Partners, Inc. to serve as information agent in connection with the Rights Offering (the “Information Agent” and together with the Subscription Agent the “Agents”) and to perform services in connection with the Rights Offering that are customary for an information agent.

9. Covenants of the Company. The Company covenants and agrees with the Dealer-Manager:

(a) To use its best efforts to cause the Registration Statement and any amendments thereto to become effective; to advise the Dealer-Manager, promptly after it receives notice thereof, of the time when the Registration Statement, or any amendment thereto, becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and to furnish the Dealer-Manager with copies thereof; to prepare a Prospectus in a form approved by the Dealer-Manager (such approval not to be unreasonably withheld or delayed) and to file such Prospectus pursuant to Rule 424(b) under the Securities Act within the time prescribed by such rule; to advise the Dealer-Manager, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, of the suspension of the qualification of the Rights for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification, to use promptly its reasonable best efforts to obtain its withdrawal;

(b) To deliver promptly to the Dealer-Manager, at any such location as requested by the Dealer Manger, such number of the following documents as the Dealer-Manager shall reasonably request: (i) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits other than this Agreement, any other Offer Documents filed as exhibits, the computation of the ratio of earnings to fixed charges and the computation of per share earnings), (ii) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus and (iii) any document incorporated by reference in the Prospectus (excluding exhibits thereto); and, if the delivery of a prospectus is required at any time during which the Prospectus relating to the Rights or the Rights Shares is required to be delivered under the Securities Act and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Securities Act or the Exchange Act, to notify the Dealer-Manager and, upon its request, to file such document and to prepare and furnish without charge to the Dealer-Manager as many copies as the Dealer-Manager may from time to time reasonably request of an amended or supplemented Prospectus which will correct such statement or omission or effect such compliance;

(c) To file promptly with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the judgment of the Company or the Dealer-Manager, be necessary or advisable in connection with the distribution of the Rights or the sale of the Underlying Shares or be requested by the Commission;

(d) Prior to filing with the Commission any: (i) Preliminary Prospectus, (ii) amendment to the Registration Statement, any document incorporated by reference in the Prospectus or (iii) any Prospectus pursuant to Rule 424 of the Securities Act, to furnish a copy thereof to the Dealer-Manager and counsel for the Dealer-Manager and obtain the consent of the Dealer-Manager to the filing (which consent shall not be unreasonably withheld);

(e) To furnish to the Dealer-Manager copies of all materials not available via EDGAR furnished by the Company to its shareholders and all public reports and all reports and financial statements furnished by the Company to the principal national securities exchange upon which any of the Company's securities may be listed pursuant to requirements of or agreements with such exchange or to the Commission pursuant to the Exchange Act or any rule or regulation of the Commission thereunder;

(f) To qualify or register the Rights and the Rights Shares for sale under (or obtain exemptions from the application of) the state securities or blue sky laws of those jurisdictions designated by the Dealer-Manager, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Rights and the Rights Shares. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Dealer-Manager promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Rights and the Rights Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(g) To apply the net proceeds from the exercise of the Rights in the manner described under the caption "Use of Proceeds" in the Prospectus.

(h) Prior to the effective date of the Registration Statement, to apply for the listing of the Rights and Common Stock underlying the Rights Shares on the NasdaqCM and to use its best efforts to complete that listing, subject only to official notice of issuance (if applicable), prior to the expiration of the Rights Offering. Prior to the effective date of the Registration Statement, to apply for the listing of the Rights Shares on the OTC Bulletin Board and to use its best efforts to complete that listing prior to the expiration of the Rights Offering.

(i) To take such steps as shall be necessary to ensure that neither the Company nor any Subsidiary shall become an "investment company" within the meaning of such term under the Investment Company Act of 1940 and the rules and regulations of the Commission thereunder.

(j) To advise the Dealer-Manager, directly or through the Subscription Agent, from time to time, as the Dealer-Manager shall request, of the number of Rights Shares subscribed for, and arrange for the Subscription Agent to furnish the Dealer-Manager with copies of written reports it furnishes to the Company concerning the Rights Offering;

(k) To commence mailing the Offer Documents to record holders of the Common Stock not later than the second business day following the record date for the Rights Offering, and complete such mailing as soon as practicable;

(l) To reserve and keep available for issue upon the exercise of the Rights such number of authorized but unissued shares of Rights Shares as will be sufficient to permit the exercise in full of all Rights, except as otherwise contemplated by the Prospectus.

(m) To not take, directly or indirectly, any action designed to cause or to result in, or that has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the issuance of the Rights or the sale or resale of the Rights Shares.

10. Conditions of Dealer-Manager's Obligations. The obligations of the Dealer-Manager hereunder are subject to (and the occurrence of any Closing shall be conditioned upon) the accuracy, as of the date hereof and at all times during the Rights Offering, of the representations and warranties of the Company contained herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) (i) The Registration Statement shall have become effective and the Prospectus shall have been timely filed with the Commission in accordance with the Securities Act; (ii) all post-effective amendments to the Registration Statement shall have become effective; (iii) no stop order suspending the effectiveness of the Registration Statement or any amendment or supplement thereto shall have been issued and no proceedings for the issuance of any such order shall have been initiated or threatened, and any request of the Commission for additional information (to be included in the Registration Statement or the Prospectus or otherwise) shall have been disclosed to the Dealer-Manager and complied with to the Dealer-Manager's reasonable satisfaction.

(b) The Dealer-Manager shall not have been advised by the Company or shall have discovered and disclosed to the Company that the Registration Statement or the Prospectus or any amendment or supplement thereto, contains an untrue statement of fact which in the Dealer-Manager's opinion, or in the opinion of counsel to the Dealer-Manager, is material, or omits to state a fact which, in the Dealer-Manager's opinion, or in the opinion of counsel to the Dealer-Manager, is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(c) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the Rights, the Rights Shares, the Dealer-Manager Warrant, the Registration Statement and the Prospectus, and all other legal matters relating to this Agreement and the transactions contemplated hereby shall be reasonably satisfactory in all material respects to counsel for the Dealer-Manager, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(d) Concurrently with the execution of this Agreement, there shall have been furnished to the Dealer-Manager the signed opinion (addressed to the Dealer-Manager) of Qashu & Schoenthaler LLP, counsel for the Company, dated the date hereof and in form and substance satisfactory to counsel for the Dealer-Manager, to the effect of the opinions set forth on Exhibit A hereto.

(e) Concurrently with the execution of this Agreement, the Company shall have furnished to the Dealer-Manager a letter of Weinberg, addressed to the Dealer-Manager and dated the date hereof: (i) confirming that they are independent registered public accountants of the Company within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under the PCAOB and applicable rules of the Commission, and (ii) stating, as of the date of the letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than five days prior to the date of the letter), the conclusions and findings of such firm with respect to the financial information and other matters specified by the Dealer-Manager.

(f) The Company shall have furnished to the Dealer-Manager a certificate, dated the date hereof, of its Chief Executive Officer or President and its Chief Financial Officer stating that:

- i. To the best of their knowledge after reasonable investigation, the representations, warranties, covenants and agreements of the Company hereof are true and correct in all material respects;
- ii. The conditions set forth in this Agreement have been fulfilled;
- iii. Neither the Company nor any of its Subsidiaries has sustained any material loss or interference with its business, whether or not covered by insurance, or from any labor dispute or any legal or governmental proceeding;
- iv. Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, there has not been any Material Adverse Change or any development involving a prospective Material Adverse Change; and
- v. They have carefully examined the Registration Statement and the Prospectus and, in their opinion (A) the Registration Statement and the Prospectus, as of the Effective Date, did not include any untrue statement of a material fact and did not omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (B) since the Effective Date no event has occurred which should have been set forth in a supplement or amendment to the Registration Statement or the Prospectus.

(g) Neither the Company nor any of its Subsidiaries shall have sustained since the date of the latest audited financial statements included in the Prospectus any Material Adverse Change, the effect of which is, in the judgment of the Dealer-Manager, so material and adverse as to make it impracticable or inadvisable to proceed with the Rights Offering.

(h) The NasdaqCM shall have approved the Rights and the Common Stock underlying the Rights Shares for listing, subject only to official notice of issuance, as applicable. The OTC Bulletin Board shall have approved the Rights Shares for quotation.

(i) All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Dealer-Manager.

11. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless the Dealer-Manager and its affiliates and any officer, director, employee or agent of Source or any such affiliates and any Person controlling (within the meaning of Section 20(a) of the Exchange Act) the Dealer-Manager or any of such affiliates (collectively, the “Indemnified Parties”) from and against any and all losses, claims, damages, liabilities and expenses whatsoever, under the Securities Act or otherwise (as incurred or suffered and including, but not limited to, any and all legal or other expenses incurred in connection with investigating, preparing to defend or defending any lawsuit, claim or other proceeding, commenced or threatened, whether or not resulting in any liability, which legal or other expenses shall be reimbursed by the Company promptly after receipt of any invoices therefore from the Dealer-Manager), (A) arising out of or based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in the Offer Documents or any amendment or supplement thereto, in any other solicitation material used by the Company or authorized by it for use in connection with the Rights Offering, or in any blue sky application or other document prepared or executed by the Company (or based on any written information furnished by the Company) specifically for the purpose of qualifying any or all of the Rights or the Rights Shares under the securities laws of any state or other jurisdiction (any such application, document or information being hereinafter called a “Blue Sky Application”) or arising out of or based upon the omission or alleged omission to state in any such document a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than statements or omissions made in reliance upon and in conformity with the Dealer-Manager Information), (ii) any withdrawal or termination by the Company of, or failure by the Company to make or consummate, the Rights Offering, (iii) any actions taken or omitted to be taken by an indemnified party with the consent of the Company or in conformity with actions taken or omitted to be taken by the Company or (iv) any failure by the Company to comply with any agreement or covenant, contained in this Agreement or (B) arising out of, relating to or in connection with or alleged to arise out of, relate to or be in connection with, the Rights Offering, any of the other transactions contemplated thereby or the performance of Source’s services to the Company with respect to the Rights Offering.

(b) If the indemnification provided for in the foregoing paragraph is judicially determined to be unavailable (other than in accordance with the terms hereof) to any Indemnified Party otherwise entitled to indemnity in respect of any losses, claims, damages or liabilities referred to herein, then, in lieu of indemnifying such person hereunder, whether or not the Dealer-Manager is the person entitled to indemnification or reimbursement, the Company shall contribute to the amount paid or payable by the Indemnified Party as a result of such losses, claims, damages or liabilities (and expenses relating thereto) (i) in such proportion as is appropriate to reflect the relative benefits to the Company, on the one hand, and the Dealer-Manager, on the other hand, of the Rights Offering or (ii) if the allocation provided for in clause (i) above is not available, in such proportion as is appropriate to reflect not only the relative benefits referred to in such clause (i) but also the relative fault of each of the Company and the Dealer-Manager, as well as any other relevant equitable considerations; provided, however, in no event shall the Dealer-Manager’s aggregate contribution to the amount paid or payable exceed the aggregate amount of fees actually received by the Dealer-Manger under this Agreement. For the purposes of this Agreement, the relative benefits to the Company and to the Dealer-Manager of the engagement shall be deemed to be in the same proportion as (a) the total value paid or contemplated to be paid or received or contemplated to be received by the Company in the Rights Offering, whether or not the Rights Offering is consummated, bears to (b) the fees paid or to be paid to the Dealer-Manager under this Agreement.

(c) The Company also agrees that neither the Dealer-Manager, nor any other Indemnified Party, shall have any liability to the Company for or in connection with the Dealer-Manager's engagement as Dealer-Manager, except for any such liability for losses, claims, damages, liabilities or expenses incurred by the Company which are finally judicially determined to have resulted primarily from the Dealer-Manager's bad faith, willful misconduct, or gross negligence. The foregoing agreement shall be in addition to any rights that the Dealer-Manager, the Company or any Indemnified Party may have at common law or otherwise, including, but not limited to, any right to contribution. For the sole purpose of enforcing and otherwise giving effect to the provisions of this Agreement, the Company hereby consents to personal jurisdiction and service and venue in any court in which any claim which is subject to this agreement is brought against the Dealer-Manager or any other indemnified party.

(d) The Company agrees that it will not, without the prior written consent of the Dealer-Manager, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the Dealer-Manager is an actual or potential party to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release, reasonably satisfactory in form and substance to the Dealer-Manager, releasing the Dealer-Manager from all liability arising out of such claim, action, suit or proceeding.

12. Effective Date of Agreement; Termination.

(a) This Agreement shall become effective upon the later of the time on which the Dealer-Manager shall have received notification of the effectiveness of the Registration Statement and the time which this Agreement shall have been executed by all of the parties hereto.

(b) This Agreement shall terminate upon the earliest to occur of (a) the consummation, termination or withdrawal of the Rights Offering, and (b) the withdrawal by the Dealer-Manager pursuant to Section 4.

13. Survival of Certain Provisions. The agreements contained in Sections 3, 6, 7 and 13 through 21 hereof and the representations, warranties and agreements of the Company contained in Section 5 hereof shall survive the consummation of or failure to commence the Rights Offering and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party.

14. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) sent by facsimile with immediate telephonic confirmation or (c) sent by registered or certified mail, return receipt requested, postage prepaid, to the parties hereto as follows

If to the Dealer-Manager:

Source Capital Group, Inc.  
276 Post Road West  
Westport, CT 06880  
Attention: Richard Kreger  
Facsimile 203-341-3500 ext. 224

With a copy to:

Weinstein Smith LLP  
The Graybar Building  
420 Lexington Avenue, Suite 2620  
New York, NY 10170  
Attention: Joseph Smith  
Facsimile: 212.401.4741

If to the Company:

Reed's, Inc.  
13000 South Spring Street  
Los Angeles, CA 90061  
Attention: Christopher Reed  
Facsimile:

With a copy to:

Qashu & Schoenthaler LLP  
1801 Century Park East, 25th Floor  
Los Angeles, CA 90067  
Attention: Ruba Qashu  
Facsimile: 866-313-3040

15. Parties. This Agreement shall inure to the benefit of and be binding upon the Dealer-Manager, the Company and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those Persons, except that the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of the Person or Persons, if any, who control the Dealer-Manager within the meaning of Section 15 of the Act. Nothing in this Agreement shall be construed to give any Person, other than the Persons referred to in this Section, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

16. Amendment. This Agreement may not be amended or modified except in writing signed by each of the parties hereto.

17. Governing Law; Venue. This Agreement shall be deemed to have been executed and delivered in New York and both this Agreement and the transactions contemplated hereby shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws of the State of New York, without regard to the conflicts of laws principals thereof (other than Section 5-1401 of The New York General Obligations Law). Each of the Dealer-Manager and the Company: (a) agrees that any legal suit, action or proceeding arising out of or relating to this Agreement and/or the transactions contemplated hereby shall be instituted exclusively in the Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York, (b) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding, and (c) irrevocably consents to the jurisdiction of Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York in any such suit, action or proceeding. Each of the Dealer-Manager and the Company further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the Supreme Court of the State of New York, New York County, or in the United States District Court for the Southern District of New York and agrees that service of process upon the Company mailed by certified mail to the Company's address or delivered by Federal Express via overnight delivery shall be deemed in every respect effective service of process upon the Company, in any such suit, action or proceeding, and service of process upon the underwriters mailed by certified mail to the Dealer-Manager's address or delivered by Federal Express via overnight delivery shall be deemed in every respect effective service process upon the Underwriter, in any such suit, action or proceeding. THE COMPANY (ON BEHALF OF ITSELF AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ON BEHALF OF ITS RESPECTIVE EQUITY HOLDERS AND CREDITORS) HEREBY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE REGISTRATION STATEMENT, ANY PRELIMINARY PROSPECTUS AND THE PROSPECTUS.

18. Entire Agreement. This Agreement, together with the exhibit attached hereto and as the same may be amended from time to time in accordance with the terms hereof, contains the entire agreement among the parties hereto relating to the subject matter hereof and there are no other or further agreements outstanding not specifically mentioned herein.

19. Severability. If any term or provision of this Agreement or the performance thereof shall be invalid or unenforceable to any extent, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement and this Agreement shall be valid and enforced to the fullest extent permitted by law.

20. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

21. Counterparts. This Agreement may be executed 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. Delivery of a signed counterpart of this Agreement by facsimile or other electronic transmission shall constitute valid and sufficient delivery thereof. If the foregoing correctly sets forth your understanding, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among us.

Very truly yours,

**REED'S INC.**

By: /s/ Christopher Reed

Name: Christopher Reed

Title: Chief Executive Officer

**Accepted and agreed as of the date first written above:**

**SOURCE CAPITAL GROUP, INC.**

By: /s/ Richard H. Kreger

Name: Richard H. Kreger

Title: Sr. Managing Director, Investment Banking

By: /s/ Russ Newton

Name: Russ Newton

Title: Chief Financial Officer

*[Signature Page to Dealer-Manager Agreement]*

[FORM OF SUBSCRIPTION RIGHTS CERTIFICATE TO  
PURCHASE RIGHTS FOR SERIES B CONVERTIBLE PREFERRED STOCK]

RIGHTS CERTIFICATE #:

NUMBER OF RIGHTS

THE TERMS AND CONDITIONS OF THE RIGHTS OFFERING ARE SET FORTH IN THE COMPANY’S PROSPECTUS DATED \_\_\_\_\_, 2009 (THE “PROSPECTUS”) AND ARE INCORPORATED HEREIN BY REFERENCE. COPIES OF THE PROSPECTUS ARE AVAILABLE UPON REQUEST FROM MACKENZIE PARTNERS, INC., THE INFORMATION AGENT.

**REED’S, INC.**

Incorporated under the laws of the State of Delaware

**SUBSCRIPTION RIGHTS CERTIFICATE**

Evidencing Subscription Rights to Purchase Shares of Series B Convertible Preferred Stock of Reed’s, Inc.

Subscription Price: \$10.00 per Share

THE SUBSCRIPTION RIGHTS WILL EXPIRE IF NOT EXERCISED ON OR BEFORE 5:00 P.M., NEW YORK CITY TIME, ON [ \_\_\_\_\_ ], 2009, UNLESS EXTENDED BY THE COMPANY

**REGISTERED  
OWNER:**

THIS CERTIFIES THAT the registered owner whose name is inscribed hereon is the owner of the number of subscription rights (“Rights”) set forth above. Four (4) whole Rights entitle the holder thereof to subscribe for and purchase one share of Series B Convertible Preferred Stock (“Series B Preferred”), of Reed’s, Inc., a Delaware corporation at a subscription price of \$10.00 per share (the “Basic Subscription Right”), pursuant to a rights offering (the “Rights Offering”), on the terms and subject to the conditions set forth in the Prospectus and subject to proration. Holders who fully exercise their Basic Subscription Right are entitled to subscribe for

additional shares of Series B Preferred that remain unsubscribed for as a result of any unexercised Basic Subscription Right pursuant to the terms and conditions of the Rights Offering, subject to proration, as described in the Prospectus (the “Over-Subscription Right”). The Rights represented by this Subscription Rights Certificate may be exercised by completing Form 1 and any other appropriate forms on the reverse side hereof and by returning the full payment of the subscription price for each share of Series B Preferred.

This Subscription Rights Certificate is not valid unless countersigned by the subscription agent and registered by the registrar. Witness the seal of Reed’s, Inc. and the signatures of its duly authorized officers.

Date:

\_\_\_\_\_  
[Chief Executive Officer  
and Principal Executive Officer]

\_\_\_\_\_  
[Executive Vice President]

DELIVERY OPTIONS FOR SUBSCRIPTION RIGHTS CERTIFICATE

Delivery other than in the manner or to the addresses listed below will not constitute valid delivery.

If delivering by Hand/Mail/Overnight Courier:  
Continental Stock Transfer & Trust Company  
17 Battery Place, 8th Floor  
New York, NY 10004  
(212) 509-4000, x 536

PLEASE PRINT ALL INFORMATION CLEARLY AND LEGIBLY.

FORM 1-EXERCISE OF SUBSCRIPTION RIGHTS

To subscribe for shares pursuant to your Basic Subscription Right, please complete lines (a) and (c) and sign under Form 4 below. To subscribe for shares pursuant to your Over-Subscription Right, please also complete line (b) and sign under Form 4 below. To the extent you subscribe for more shares than you are entitled under either the Basic Subscription Right or the Over-Subscription Right, you will be deemed to have elected to purchase the maximum number of shares for which you are entitled to subscribe under the Basic Subscription Right or Over-Subscription Right, as applicable.

(a) EXERCISE OF BASIC SUBSCRIPTION RIGHT:

I apply for \_\_\_\_\_ shares x \$ [ ] = \$  
(no. of new shares) (subscription price) (amount enclosed)

(b) EXERCISE OF OVER-SUBSCRIPTION RIGHT

If you have exercised your Basic Subscription Right in full and wish to subscribe for additional shares in an amount equal to up to 400% of the shares of Series B Preferred for which you are otherwise entitled to subscribe pursuant to your Over-Subscription Right:

I apply for \_\_\_\_\_ shares x \$ [ ] = \$  
(no. of new shares) (subscription price) (amount enclosed)

(c) Total Amount of Payment Enclosed = \$

METHOD OF PAYMENT (CHECK ONE)

- Check or bank draft drawn on a U.S. bank, or postal telegraphic or express.
- Money order payable to "Continental Stock Transfer & Trust Company, as Subscription Agent." Funds paid by an uncertified check may take at least five business days to clear.
- Wire transfer of immediately available funds directly to the account maintained by Continental Stock Transfer & Trust Company, as Subscription Agent, for purposes of accepting subscriptions in this Rights Offering at [ Bank], [Address], ABA #[ ], Account # [ ] [ ] FBO Reed's, Inc.), with reference to the rights holder's name.

FORM 2-DELIVERY TO DIFFERENT ADDRESS

If you wish for the Series B Preferred underlying your subscription rights, a certificate representing unexercised subscription rights or the proceeds of any sale of subscription rights to be delivered to an address different from that shown on the face of this Subscription Rights Certificate, please enter the alternate address below, sign under Form 3 and have your signature guaranteed under Form 4.

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**FORM 3-SIGNATURE**

TO SUBSCRIBE: I acknowledge that I have received the Prospectus for this Rights Offering and I hereby irrevocably subscribe for the number of shares of Series B Preferred indicated above on the terms and conditions specified in the Prospectus.

Signature(s): \_\_\_\_\_

IMPORTANT: The signature(s) must correspond with the name(s) as printed on the reverse of this Subscription Rights Certificate in every particular, without alteration or enlargement, or any other change whatsoever.

**FORM 4-SIGNATURE GUARANTEE**

This form must be completed if you have completed any portion of Form 2.

Signature Guaranteed: \_\_\_\_\_  
(Name of Bank or Firm)

By: \_\_\_\_\_  
(Signature of Officer)

IMPORTANT: The signature(s) should be guaranteed by an eligible guarantor institution (bank, stock broker, savings & loan association or credit union) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15.

FOR INSTRUCTIONS ON THE USE OF REED'S, INC. SUBSCRIPTION RIGHTS CERTIFICATES, CONSULT MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, AT (800) 322-2885.

[FORM OF NOTICE TO STOCKHOLDERS WHO ARE RECORD HOLDERS]

REED'S, INC.

NOTICE TO STOCKHOLDERS WHO ARE RECORD HOLDERS

Up to 300,000 Shares of Series B Convertible Preferred Stock Issuable Upon Exercise of Rights  
to Subscribe for Such Shares at \$10.00 per Share

Enclosed for your consideration is a prospectus, dated [ ], 2009 (the "**Prospectus**"), relating to the offering by Reed's, Inc., a Delaware corporation (the "**Company**") of subscription rights (the "**Rights Offering**") to purchase shares of the Company's Series B Convertible Preferred Stock ("**Series B Preferred**") by stockholders of record ("**Record Date Stockholders**") as of 5:00 p.m., New York City time, on [ ], 2009 (the "**Record Date**").

Pursuant to the offering, the Company is issuing Rights to subscribe for up to 300,000 shares of the Company's Series B Preferred, on the terms and subject to the conditions described in the Prospectus. The Rights may be exercised at any time during the subscription period, which commences on [ ], 2009 and ends at 5:00 p.m., New York City time, on [ ], 2009, unless extended by the Company in its sole discretion (as it may be extended, the "**Expiration Date**"). The Series B Preferred will not be listed on the NASDAQ Capital Market; however the Company intends to apply to the OTC Bulletin Board for quotation of the Series B Preferred. The Rights are transferable and will be listed for trading on the NASDAQ Capital Market under the symbol "REEDR" during the course of this offering.

As described in the Prospectus, Record Date Stockholders will receive one (1) Right for each share of the Company's common stock, \$0.0001 par value, owned on the Record Date.

Four (4) Rights entitle the holder (the "**Rights Holders**") to purchase one share of Series B Preferred at the subscription price of \$10.00 per share (the "**Basic Subscription Right**").

Rights Holders who fully exercise their Basic Subscription Right will be entitled to subscribe for additional shares that remain unsubscribed as a result of any unexercised Basic Subscription Right (the "**Over-Subscription Right**" and together with the Basic Subscription Right, the "**Rights**"). If requests for shares of Series B Preferred pursuant to the Basic Subscription Right exceed the shares of Series Preferred available, the shares of Series B Preferred will be allocated pro-rata among Rights Holders on the number of Rights then held. Each Over-Subscription Right entitles the holder to subscribe for an additional amount equal to up to 400% of the shares of Series B Preferred for which such holder was otherwise entitled to subscribe (calculated prior to the exercise of any rights). If sufficient remaining shares of Series B Preferred are available, all over-subscription requests will be honored in full. If requests for shares of Series B Preferred pursuant to the Over-Subscription Right exceed the remaining shares of Series Preferred available, the remaining shares of Series B Preferred will be allocated pro-rata among Rights Holders who over-subscribe based on the number of Rights then held. Rights may only be exercised for whole numbers of shares; no fractional shares of Series B Preferred will be issued in the Rights Offering.

The rights will be evidenced by subscription rights certificates (the "**Subscription Certificates**").



## [FORM OF NOTICE TO STOCKHOLDERS WHO ARE ACTING AS NOMINEES]

## REED'S, INC.

## NOTICE TO STOCKHOLDERS WHO ARE ACTING AS NOMINEES

Up to 300,000 Shares of Series B Convertible Stock and  
Issuable Upon  
Exercise of Rights to Subscribe for Such Shares at 10.00 per Share

This letter is being distributed to broker-dealers, trust companies, banks and other nominees in connection with the offering by Reed's, Inc., a Delaware corporation (the "**Company**") of subscription rights (the "**Rights Offering**") to purchase shares of the Company's Series B Convertible Preferred Stock ("**Series B Preferred**") by stockholders of record ("**Record Date Stockholders**") as of 5:00 p.m., New York City time, on [ ], 2009 (the "**Record Date**").

Pursuant to the offering, the Company is issuing Rights to subscribe for up to 300,000 shares of the Company's Series B Preferred, on the terms and subject to the conditions described in the Prospectus. The Rights may be exercised at any time during the subscription period, which commences on [ ], 2009 and ends at 5:00 p.m., New York City time, on [ ], 2009, unless extended by the Company in its sole discretion (as it may be extended, the "**Expiration Date**"). The Series B Preferred will not be listed on the NASDAQ Capital Market; however the Company intends to apply to the OTC Bulletin Board for quotation of the Series B Preferred. The Rights are transferable and will be listed for trading on the NASDAQ Capital Market under the symbol "REEDR" during the course of this offering.

As described in the Prospectus, Record Date Stockholders will receive one (1) Right for each share of the Company's common stock, \$0.0001 par value ("**Common Stock**") owned on the Record Date.

Four (4) Rights entitle the holder (the "**Rights Holders**") to purchase one share of Series B Preferred at the subscription price of \$10.00 per share (the "**Basic Subscription Right**").

Rights Holders who fully exercise their Basic Subscription Right will be entitled to subscribe for additional shares that remain unsubscribed as a result of any unexercised Basic Subscription Right (the "**Over-Subscription Right**" and together with the Basic Subscription Right, the "**Rights**"). If requests for shares of Series B Preferred pursuant to the Basic Subscription Right exceed the shares of Series Preferred available, the shares of Series B Preferred will be allocated pro-rata among Rights Holders on the number of Rights then held. Each Over-Subscription Right entitles the holder to subscribe for an additional amount equal to up to 400% of the shares of Series B Preferred for which such holder was otherwise entitled to subscribe (calculated prior to the exercise of any rights). If sufficient remaining shares of Series B Preferred are available, all over-subscription requests will be honored in full. If requests for shares of Series B Preferred pursuant to the Over-Subscription Right exceed the remaining shares of Series Preferred available, the remaining shares of Series B Preferred will be allocated pro-rata among Rights Holders who over-subscribe based on the number of Rights then held. Rights may only be exercised for whole numbers of shares; no fractional shares of Series B Preferred will be issued in the Rights Offering.

The Rights are evidenced by a subscription rights certificate (a "**Subscription Certificate**") registered in your name or the name of your nominee.

We are asking persons who hold shares of the Company's Common Stock beneficially, and who have received the Rights distributable with respect to those shares through a broker-dealer, trust company, bank or other nominee, to contact the appropriate institution or nominee and request it to effect the transactions for them.

If you exercise the Over-Subscription Right on behalf of beneficial owners of Rights, you will be required to certify to the Subscription Agent and the Company, in connection with the exercise of the Over-Subscription Right, as to the aggregate number of Rights that have been exercised pursuant to the Subscription Right, whether the Rights exercised pursuant to the Basic Subscription Right on behalf of each beneficial owner for which you are acting have been exercised in full and the number of shares of Series B Preferred being subscribed for pursuant to the Over-Subscription Right by each beneficial owner of Rights on whose behalf you are acting.

Enclosed are copies of the following documents:

1. Prospectus, dated [                      ], 2009; and
2. A form of letter which may be sent to beneficial holders of the Company's Common Stock.

Rights not exercised at or prior to 5:00 p.m., New York City time, on the Expiration Date will expire.

Additional copies of the enclosed materials may be obtained from the Information Agent, Mackenzie Partners, Inc. toll-free at the following telephone number: (800) 322-2885.

**NOTHING HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL MAKE YOU OR ANY OTHER PERSON AN AGENT OF THE COMPANY; THE DEALER-MANAGER, THE SUBSCRIPTION AGENT, THE INFORMATION AGENT OR ANY OTHER PERSON MAKING OR DEEMED TO BE MAKING OFFERS OF THE SECURITIES ISSUABLE UPON VALID EXERCISE OF THE RIGHTS, OR AUTHORIZE YOU OR ANY OTHER PERSON TO MAKE ANY STATEMENTS ON BEHALF OF ANY OF THEM WITH RESPECT TO THE OFFERING, EXCEPT FOR STATEMENTS MADE IN THE PROSPECTUS.**

[FORM OF NOTICE TO BENEFICIAL STOCKHOLDERS OF COMMON STOCK]

REED'S, INC.

NOTICE TO CLIENTS OF STOCKHOLDERS WHO ARE ACTING AS NOMINEES

Up to 300,000 Shares of Series B Convertible Preferred Stock Issuable Upon  
Exercise of Rights to Subscribe for Such Shares at \$10.00 per Share

Enclosed for your consideration is a prospectus, dated [ ], 2009 (the "**Prospectus**"), relating to the offering by Reed's, Inc., a Delaware corporation (the "**Company**") of subscription rights (the "**Rights Offering**") to purchase shares of the Company's Series B Convertible Preferred Stock ("**Preferred Stock**"), by stockholders of record ("**Record Date Stockholders**") as of 5:00 p.m., New York City time, on [ ], 2009 (the "**Record Date**").

Pursuant to the offering, the Company is issuing Rights to subscribe for up to 300,000 shares of the Company's Series B Preferred, on the terms and subject to the conditions described in the Prospectus. The Rights may be exercised at any time during the subscription period, which commences on [ ], 2009 and ends at 5:00 p.m., New York City time, on [ ], 2009, unless extended by the Company in its sole discretion (as it may be extended, the "**Expiration Date**"). The Series B Preferred will not be listed on the NASDAQ Capital Market; however the Company intends to apply to the OTC Bulletin Board for quotation of the Series B Preferred. The Rights are transferable and will be listed for trading on the NASDAQ Capital Market under the symbol "REEDR" during the course of this offering.

As described in the Prospectus, Record Date Stockholders will receive one (1) Right for each share of the Company's common stock, \$0.0001 par value, owned on the Record Date.

Four (4) Rights entitle the holder (the "**Rights Holders**") to purchase one share of Series B Preferred at the subscription price of \$10.00 per share (the "**Basic Subscription Right**").

Rights Holders who fully exercise their Basic Subscription Right will be entitled to subscribe for additional shares that remain unsubscribed as a result of any unexercised Basic Subscription Right (the "**Over-Subscription Right**" and together with the Basic Subscription Right, the "**Rights**"). If requests for shares of Series B Preferred pursuant to the Basic Subscription Right exceed the shares of Series Preferred available, the shares of Series B Preferred will be allocated pro-rata among Rights Holders on the number of Rights then held. Each Over-Subscription Right entitles the holder to subscribe for an additional amount equal to up to 400% of the shares of Series B Preferred for which such holder was otherwise entitled to subscribe (calculated prior to the exercise of any rights). If sufficient remaining shares of Series B Preferred are available, all over-subscription requests will be honored in full. If requests for shares of Series B Preferred pursuant to the Over-Subscription Right exceed the remaining shares of Series Preferred available, the remaining shares of Series B Preferred will be allocated pro-rata among Rights Holders who over-subscribe based on the number of Rights then held. Rights may only be exercised for whole numbers of shares; no fractional shares of Series B Preferred will be issued in the Rights Offering.

The Rights will be evidenced by subscription certificates (the "**Subscription Certificates**").

Enclosed are copies of the following documents:

1. Prospectus, dated [        ], 2009; and
2. Beneficial Owner Election Form.

**THE MATERIALS ENCLOSED ARE BEING FORWARDED TO YOU AS THE BENEFICIAL OWNER OF COMMON STOCK CARRIED BY US IN YOUR ACCOUNT BUT NOT REGISTERED IN YOUR NAME. EXERCISES OF RIGHTS MAY ONLY BE MADE BY US AS THE RECORD OWNER AND PURSUANT TO YOUR INSTRUCTIONS.**

Accordingly, we request instructions as to whether you wish us to elect to subscribe for any shares of Series B Preferred to which you are entitled pursuant to the terms and subject to the conditions set forth in the enclosed Prospectus. However, we urge you to read the Prospectus carefully before instructing us to exercise any Rights. Your instructions to us should be forwarded as promptly as possible in order to permit us to exercise the Rights on your behalf in accordance with the provisions of the offering. The Rights Offering will expire at 5:00 p.m., New York City time, on the Expiration Date. You will have no right to rescind your subscription after receipt of your payment of the subscription price, except as described in the Prospectus. Rights not exercised at or prior to 5:00 p.m., New York City time, on the Expiration Date will expire.

If you wish to have us, on your behalf, exercise your Rights for any shares of Series B Preferred to which you are entitled, please so instruct us by completing, executing and returning to us the Beneficial Owner Election Form included with this letter.

**ANY QUESTIONS OR REQUESTS FOR ASSISTANCE CONCERNING THE RIGHTS OFFERING SHOULD BE DIRECTED TO MACKENZIE PARTNERS, INC., THE INFORMATION AGENT, TOLL-FREE AT THE FOLLOWING TELEPHONE NUMBER: (800) 322-2885**

[FORM OF BENEFICIAL OWNER ELECTION FORM ]

FORM OF BENEFICIAL OWNER ELECTION

The undersigned acknowledge(s) receipt of your letter and the enclosed materials referred to therein relating to the offering (the “Rights Offering”) by Reed’s, Inc., a Delaware corporation (the “Company”) of subscription rights (the “Rights”) to purchase shares of the Company’s Series B Convertible Preferred Stock (“Series B Preferred”).

With respect to any instructions to exercise (or not to exercise) the Rights, the undersigned acknowledges that this form must be completed and returned such that it will actually be received by you by 5:00 p.m., New York City time, on [ ], 2009, the last business day prior to the scheduled expiration date of the Rights Offering of [ ], 2009 (which may be extended by the Company in its sole discretion).

This will instruct you whether to exercise Rights to purchase shares of the Series B Preferred distributed with respect to the shares of the Company’s common stock, \$0.0001 par value, held by you for the account of the undersigned, pursuant to the terms and subject to the conditions set forth in the Prospectus and the related Subscription Rights Certificates.

Box 1.  • Please DO NOT EXERCISE RIGHTS for shares of Series B Preferred.

Box 2.  • Please EXERCISE RIGHTS for shares of Series B Preferred as set forth below.

The number of Rights for which the undersigned gives instructions for exercise under the Basic Subscription Rights should not exceed the number of Rights that the undersigned is entitled to exercise.

	Number of Shares	Per Share Subscription Price	Payment
Basic Subscription Right	[ ] X	\$[ ] =	\$_____ (Line 1)
Over-Subscription Right	[ ] X	\$[ ] =	\$_____ (Line 2)
	Total Payment Required		\$_____ (Sum of Lines 1 and 2 must equal total of amounts in Boxes 3 and 4)

Box 3.  • Payment in the following amount is enclosed \$\_\_\_\_\_.

Box 4.  • Please deduct payment from the following account maintained by you as follows:

Type of Account: \_\_\_\_\_  
 Account No.: \_\_\_\_\_  
 Amount to be deducted: \$ \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_, 2009

PRELIMINARY SUBSCRIPTION AGREEMENT

REED'S, INC.  
13000 SOUTH SPRING STREET  
LOS ANGELES, CALIFORNIA 90061  
ATTN: CHRISTOPHER J. REED

Ladies and Gentlemen:

I hereby subscribe to purchase the number of shares of Series B Convertible Preferred Stock (the "shares") of Reed's, Inc.. (the "Company") indicated below.

I have received a copy of the Company's prospectus, dated [ ], 2009. I understand that my purchase of the Company's stock involves significant risk, as described under "Risk Factors" in the prospectus. I also understand that no federal or state agency has made any finding or determination regarding the fairness of the Company's offering of the shares, the accuracy or adequacy of the prospectus, or any recommendation or endorsement concerning an investment in the shares.

I am not sending the purchase price for the shares I wish to buy at this time. After I receive the prospectus supplement announcing the results of the Company's rights offering to its shareholders, if I still wish to purchase shares, I will send the Company an acknowledgment of subscription and a check in the amount of \$10.00 multiplied by the number of shares I wish to buy. My check will be made payable to "Reed's, Inc."

WHEN THE COMPANY RECEIVES MY ACKNOWLEDGMENT OF SUBSCRIPTION AND MY CHECK, THIS SUBSCRIPTION AGREEMENT WILL BECOME FINAL AND BINDING AND WILL BE IRREVOCABLE UNTIL THE OFFERING IS CLOSED.

NUMBER OF SHARES \_\_\_\_\_

TOTAL SUBSCRIPTION PRICE  
(AT \$10.00 PER SHARE): \_\_\_\_\_ \*

PLEASE PRINT OR TYPE EXACT NAME(S) IN WHICH UNDERSIGNED DESIRES SHARES TO BE REGISTERED: \_\_\_\_\_

\* DO NOT SEND THE PURCHASE PRICE FOR YOUR SHARES AT THIS TIME.

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SUBSTITUTE W-9

Under the penalty of perjury, I certify that: (1) the Social Security number or Taxpayer Identification Number given below is correct; and (2) I am not subject to backup withholding.

INSTRUCTION: YOU MUST CROSS OUT (2) ABOVE IF YOU HAVE BEEN NOTIFIED BY THE INTERNAL REVENUE SERVICE THAT YOU ARE SUBJECT TO BACKUP WITHHOLDING BECAUSE OF UNDERREPORTING INTEREST OR DIVIDENDS ON YOUR TAX RETURN.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE(S)\*

\_\_\_\_\_  
AREA CODE AND TELEPHONE NO.

PLEASE INDICATE FORM OF OWNERSHIP YOU DESIRE FOR THE SHARES (INDIVIDUAL, JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, TENANTS IN COMMON, TRUST, CORPORATION, PARTNERSHIP, CUSTODIAN, ETC.):

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\_\_\_\_\_  
SOCIAL SECURITY OR FEDERAL TAXPAYER  
IDENTIFICATION NO.

TO BE COMPLETED BY THE COMPANY

Accepted as of \_\_\_\_\_, 2009, as to \_\_\_\_\_ shares.

REED'S, INC.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\* When signing as attorney, trustee, administrator, or guardian, please give your full title as such. If a corporation, please sign in full corporate name by president or other authorized officer. In case of joint tenants, each joint owner must sign.

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ACKNOWLEDGEMENT OF SUBSCRIPTION

REED'S, INC.  
13000 SOUTH SPRING STREET  
LOS ANGELES, CALIFORNIA 90061

Dear Subscriber:

Please sign below to acknowledge receipt of the prospectus supplement and to convert your preliminary subscription to a final and binding subscription. Please enclose a check payable to "Reed's Inc." in the amount of \$10.00 multiplied by the number of shares of Series B Convertible Preferred Stock you intend to subscribe for.

Your stock certificate(s) representing shares of Series B Convertible Preferred Stock duly authorized and fully paid will be issued to you as soon as possible upon the Company's acceptance of your subscription, as described in the prospectus dated \_\_\_\_, 2009 and supplemented in the prospectus supplement dated \_\_\_\_, 2009. In the event that the offering is cancelled, your subscription funds will be returned to you as described in the prospectus.

Very Truly Yours,

REED'S, INC.

By: \_\_\_\_\_  
Christopher J. Reed  
Chief Executive Officer

\_\_\_\_\_  
Date

By signing below, I acknowledge the receipt of the initial prospectus dated \_\_\_\_, 2009, and prospectus supplement dated \_\_\_\_, 2009 of Reed's, Inc. and convert the preliminary subscription agreement to a final subscription agreement, which will be binding and irrevocable until the expiration date as defined in the prospectus.

The undersigned encloses \$ \_\_\_\_\_ for the purchase of \_\_\_\_\_ shares of Series B Convertible Preferred Stock, at the purchase price of \$10.00 per share.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

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**AMENDMENT NUMBER FIVE TO  
LOAN AND SECURITY AGREEMENT**

THIS AMENDMENT NUMBER FIVE TO LOAN AND SECURITY AGREEMENT (this "Amendment"), dated as of June 11, 2009, is entered into between **FIRST CAPITAL WESTERN REGION, LLC** ("Lender"), and **REED'S, INC.**, a Delaware corporation ("Borrower"), in light of the following facts:

**RECITALS**

WHEREAS, Borrower and Lender have previously entered into certain Loan and Security Agreement, dated as of May 30, 2008, as amended by that certain Amendment Number One to Loan and Security Agreement dated July 30, 2008, as amended by that certain Amendment Number Two to Loan and Security Agreement dated September 3, 2008, as amended by that certain Amendment Number Three to Loan and Security Agreement dated September 24, 2008, and as amended by that certain Amendment Number Four to Loan and Security Agreement dated March 27, 2009 (collectively, the "Agreement").

WHEREAS, Borrower has requested that (i) Lender consent to the sale of the Real Property and certain Equipment to 525 South Douglas Street LLC ("Buyer") for a purchase price of \$3,250,000, (ii) reduce frequency of audits, (iii) consent to an equity raise that does not require Lender's prior approval, (iv) reduce the tangible net worth covenant, and (v) replace the Fixed Charge Coverage Ratio covenant for the calendar month ended May 31, 2009, with a minimum EBITDA covenant for such month.

WHEREAS, Lender has agreed to Borrower's request subject to the terms and conditions contained in this Amendment.

WHEREAS, Borrower and Lender wish to amend the Agreement as set forth in this Amendment.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS. All terms which are defined in the Agreement shall have the same definition when used herein unless a different definition is ascribed to such term under this Amendment, in which case, the definition contained herein shall govern.

2. AMENDMENTS. Effective as of the date of this Amendment (unless a different effective date is specifically indicated), the Agreement is amended in the following respects:

(a) Addition of New Definitions. New definitions are added to Section 1 of the Agreement as follows:

"Eligible Private Label Inventory" means Inventory that (w) satisfies all of the criteria for Eligible Inventory other than the criteria set forth in clause (i) of the definition of Eligible Inventory as a result of such Inventory being subject to a private label agreement, (x) the terms and conditions of the private label agreement applicable to such Inventory, as well as the purchaser party to such private label agreement, are satisfactory to Lender, in its sole discretion, (y) a purchase order has been issued with respect to Inventory and pursuant to the applicable private label agreement that contains terms and conditions that are satisfactory to Lender in its sole discretion, and (z) the purchaser under the applicable private label agreement has entered into an agreement with Lender under which Lender shall be authorized following a Default to sell Inventory produced by Borrower pursuant to the private label agreement on terms and conditions satisfactory to Lender in its sole discretion.

“**Permitted Sale Transaction**” means a sale of the Real Property and certain of the Equipment by Borrower so long as the sale is conducted pursuant to that certain Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate, dated April 23, 2009, between 525 South Douglas Street LLC and Borrower.

(b) **Change in Maximum Credit Limit.** The definition of “**Maximum Credit Limit**” in Section 1 of the Agreement is deleted in its entirety and is replaced with a new definition as follows:

“**Maximum Credit Limit**” means \$2,000,000.

(c) **Change in Advance Rate for Eligible Inventory.** Item 1(a)(ii)(B) of the Schedule to the Agreement is deleted in its entirety and is replaced with a new Item 1(a)(ii)(B) as follows:

(B) An amount equal to the least of:

1. \$1,000,000, and

2. For the period from June 1 through November 30 of each calendar year, an amount equal to 125% of amount calculated pursuant to Item 1(a)(i)(A), and for the period from December 1 through May 31 of each calendar year, an amount equal to 150% of amount calculated pursuant to Item 1(a)(i)(A), and

3. An amount equal to (w) 50% of the dollar value (determined at the lower of cost or market value) of Eligible Inventory (other than Eligible Private Label Inventory) located at Borrower’s premises located at 12930 and 13000 South Spring Street, Los Angeles, California 90061, plus (x) 50% of the dollar value (determined at the lower of cost or market value) of Eligible Inventory (other than Eligible Private Label Inventory) consisting of finished goods (and not raw materials) located at Valley Distributing & Storage Company’s warehouse in Wilkes-Barre, Pennsylvania, plus (y) 50% of the dollar value (determined at the lower of cost or market value) of Eligible Inventory (other than Eligible Private Label Inventory) consisting of finished goods (and not raw materials) located at United Warehouses in Seattle, Washington, plus (z) an amount equal to the lesser of (1) \$150,000, and (2) 30% of the dollar value (determined at the lower of cost or market value) of Eligible Private Label Inventory,

(d) **Increased in Reserve.** Item 1(b) of the Schedule to the Agreement is deleted in its entirety and is replaced with a new Item 1(b) as follows:

(b) the sum of:

(i) \$350,000, provided that upon Lender's receipt of evidence of Borrower making a \$50,000 California Redemption Value payment, the amount under this clause (i) shall be reduced to \$300,000, plus

(ii) the Dilution Reserve and such other reserves as Lender may establish from time to time in its discretion, including, but not limited to, reserves for excessive and slow-moving Inventory and reserves for inaccuracies in Borrower's perpetual Inventory records, plus

(iii) the amount available to be drawn under, plus the amount of any unreimbursed draws with respect to, any letters of credit or acceptances which have been issued, created or guaranteed by Lender or any Affiliate of Lender for Borrower's account.

(e) **Reduce Monthly Minimum Interest Charge.** Item 10(c) of the Schedule to the Agreement is deleted in its entirety and is replaced with a new Item 10(c) as follows:

(c) Lender shall be entitled to charge a monthly minimum interest charge for each calendar month during the term of this Agreement that the average outstanding principal balance of the advances made pursuant to Section 2(a) during such month was less than \$500,000 (the "Minimum Average Monthly Loan Balance"). The monthly minimum interest charge shall be equal to the amount, if any, by which the interest charged for such month on the outstanding advances under Section 2(a) was less than the amount of interest that would have been charged had the average outstanding principal balance for such month equaled the Minimum Average Monthly Loan Balance. The monthly minimum interest charge shall represent an unconditional payment to Lender in consideration of Lender's agreement to extend financial accommodations to Borrower pursuant to this Agreement.

(f) **Increase in Unused Line Fee.** Item 10(d) of the Schedule to the Agreement is deleted in its entirety and is replaced with a new Item 10(d) as follows:

(d) On the first day of each month during the term of this Agreement, an unused line fee in an amount equal to 1.50%, per annum, times the result of (i) the Maximum Credit Limit, less (ii) the average daily net principal amount of loans outstanding hereunder during the immediately preceding month.

(g) **Addition of Monitoring Fee.** A new Item 10(f) is added to the Schedule to the Agreement as follows:

(f) For monitoring services performed by Lender in connection with the Agreement, Borrower shall pay to Lender a monthly monitoring fee of \$1,000 per month, payable monthly in advance on the first day of each calendar month beginning with the first day of July, 2009, and continuing so long as any advances shall remain outstanding or this Agreement shall not have been terminated.

(h) **Change in Fixed Charge Coverage Ratio Covenant.** Item 21(a) of the Schedule to the Agreement is deleted in its entirety and is replaced with a new Item 21(a) as follows:

(a) Borrower shall maintain a Fixed Charge Coverage Ratio (1) for each of the three-month periods ending on the last day of each calendar month from June 2009 through November 2009, and (2) for each of the twelve-month periods ending on the last day of each calendar month thereafter for the balance of the term of this Agreement, of at least 1.0 to 1.0. As used herein, "Fixed Charge Coverage Ratio" means the ratio of Borrower's (i) net income (excluding extraordinary gains) before provision for interest expense, taxes, depreciation and amortization, less cash taxes paid and unfinanced capital expenditures during such period, plus stock option expenses and stock payments in lieu of cash during the applicable period, plus any loss attributed to the Permitted Sale Transaction so long as the Permitted Sale Transaction occurred during the period being tested for compliance with the Fixed Charge Coverage Ratio; to (ii) interest expense, plus payments of principal actually made or scheduled to be made with respect to indebtedness (other than scheduled but unpaid payments on Subordinated Debt and principal payments on revolving loans under this Agreement), plus payments with respect to capitalized leases, plus cash dividends and distributions during such period.

(i) **Change in Minimum Tangible Net Worth Covenant.** Effective as of the closing of the Permitted Sale Transaction, Item 21(b) of the Schedule to the Agreement is deleted in its entirety and is replaced with a new Item 21(b) as follows:

(b) Borrower shall have a Tangible Net Worth of at least \$1,900,000. Thereafter, as of the last day of each month, Borrower's required minimum Tangible Net Worth shall be increased by 50% of the Borrower's net income for the calendar month then ended (without reduction for any losses during any such calendar month). As used herein, "Tangible Net Worth" means, as of any date, the total assets of Borrower minus the total liabilities of Borrower calculated in conformity with GAAP, less all amounts due from Borrower's Affiliates and the amount of all intangible items reflected therein.

(j) **Change in EDITDA Covenant.** Effective as May 1, 2009, Item 21(c) of the Schedule to the Agreement is deleted in its entirety and is replaced with a new Item 21(c) as follows:

(c) Borrower's net gain (excluding extraordinary gains) before provision for interest expense, taxes, depreciation, amortization, and non-cash stock option expenses, less cash taxes paid and unfinanced capital expenditures for the one month period ending May 1, 2009, shall not be less than \$1.

3. PERMITTED TRANSACTIONS.

(a) Notwithstanding the provisions contained in Section 8(a) of the Agreement to the contrary, Lender hereby consents to the Permitted Sale Transaction so long as all of the net proceeds from the sale of the Real Property and the Equipment are paid to Lender and applied to the outstanding Obligations. "Net proceeds" shall mean the gross proceeds from the sale of the Real Property and Equipment subject to the Permitted Sale Transaction, less the amount required to be paid to the holder of the senior Lien on the Real Property, less all costs, fees and expenses incurred in connection with the Permitted Sale Transaction.

(b) Notwithstanding any provisions in the Agreement to the contrary, Borrower shall be entitled to raise additional capital by the issuance of common stock of Borrower without the prior written approval of Lender so long as (i) the aggregate amount of additional capital raised by Borrower does not exceed \$2,500,000, (ii) Christopher J. Reed continues to own not less than 25% of the outstanding common stock of Borrower, (iii) all of the proceeds from the additional capital raised by Borrower (or such lesser amount as shall equal the then outstanding Obligations) shall be paid to Lender and applied to the outstanding Obligations, and (iv) no Default shall exist as of the date the Borrower completes the additional capital raise.

4. FIELD EXAMINATIONS. Notwithstanding the provisions of Section 10(c) and Item 27 of the Schedule to the contrary, so long as maintains unused borrowing availability under the Section 2(a) of the Agreement and no Default has occurred and is continuing, Lender agrees that it shall not conduct more than three (3) field examinations during any calendar year.

5. FINANCIAL COVENANT VIOLATIONS. In the event Borrower is not in compliance with any of the financial covenants set forth in Item 21 of the Schedule to the Agreement, and so long as Borrower has timely delivered its financial statements to Lender pursuant to Section 9(a) of the Agreement, Borrower shall have ten (10) business days following the reporting of such non-compliance to submit to Lender a plan (the "Plan") to correct the non-compliance. During such ten day period Lender shall forbear from issuing a notice of default (so long as no other Defaults then exist under the Agreement or the other Loan Documents). If Borrower fails to timely deliver a Plan or if a Plan that is timely delivered is not acceptable to Lender, then Lender shall no longer be obligated to forbear from issuing a notice of default.

6. FEE FOR AMENDMENT/CONSENT. Upon execution of this Amendment, in consideration of Lender's agreeing to enter into this Amendment and to consent to the sale of the Real Property and certain Equipment pursuant to this Amendment, Borrower agrees to pay Lender a fee in the amount of \$10,000, which will be fully earned and due and payable on the date of this Amendment and shall be non-refundable. Lender is authorized to charge Borrower's loan account for the full amount of such fee.

7. CONSENT TO PURCHASE OF STOCK. Borrower has requested that Lender consent to the sale of common stock of Borrower to Brad Scott, an individual ("Scott"), pursuant to that certain Stock Purchase Agreement, dated June \_\_, 2009, between Scott and Borrower (the "Stock Purchase Agreement"). Lender hereby consents to such sale so long as the aggregate number of shares of common stock purchased by Scott does not exceed 50,000 shares.

8. REPRESENTATIONS AND WARRANTIES. Borrower hereby affirms to Lender that all of Borrower's representations and warranties set forth in the Agreement are true, complete and accurate in all respects as of the date hereof.

9. LIMITED EFFECT. Except for the specific amendments contained in this Amendment, the Agreement shall remain unchanged and in full force and effect.

10. COUNTERPARTS; EFFECTIVENESS. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed and delivered shall be deemed to be an original. All such counterparts, taken together, shall constitute but one and the same Amendment. This Amendment shall become effective upon the execution of this Amendment by each of the parties hereto.

[Signatures are on the next page]

IN WITNESS WHEREOF, Lender and Borrower have executed this Amendment.

**REED'S, INC.,**  
a Delaware corporation

By /s/ Christopher J. Reed  
Name: Christopher J. Reed  
Title: Chief Excecutive Officer

**FCC, LLC**, a Florida limited liability company  
doing business as First Capital Western Region, LLC

By /s/ John P. Neher  
Name: John P. Neher  
Title: Vice President

ACKNOWLEDGMENT AND REAFFIRMATION OF GUARANTOR

The undersigned hereby acknowledges that he executed a Continuing Guaranty, dated on or around May 30, 2008 (the "Guaranty"), with respect to the present and future obligations of Borrower owing to Lender. The undersigned hereby acknowledges the foregoing Amendment, consent to its terms, and reaffirms his Guaranty. The undersigned further acknowledges that nothing in the Guaranty obligates Lender to notify the undersigned of any changes in the financial accommodations made available to Borrower or to seek future reaffirmations of the Guaranty, even if the Agreement is further amended; and no requirement to so notify the undersigned or to seek reaffirmations in the future shall be implied by the execution of this reaffirmation.

/s/ Christopher J. Reed

Christopher Reed, an individual

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors of  
Reeds, Inc.

We consent to the inclusion in the foregoing Registration Statement Amendment No. 2 on Form S-3 (Registration No. 333-156908) of our report dated February 26, 2009, except for Note 5, as to which the date is March 27, 2009, relating to the financial statements of Reeds Inc. as of December 31, 2008 and 2007 and for the years then ended, which appears in the Reed's, Inc Annual Report on Form 10-K for the fiscal years ended December 31, 2008 and 2007 filed with the Securities and Exchange Commission on March 27, 2009. We also consent to the reference to our firm under the caption "Experts".

/s/ Weinberg & Company, P.A.

Weinberg & Company, P.A.  
Certified Public Accountants

Los Angeles, California  
June 23, 2009